



February 13, 2023

United States Environmental Protection Agency
Docket ID No. EPA-HQ-OAR-2021-0317
[Submitted electronically through www.regulations.gov]

Re: Comments on the United States Environmental Protection Agency's (EPA's) Proposed Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review

Dear Ms. Marsh:

The Texas Commission on Environmental Quality (TCEQ) and the Railroad Commission of Texas (RRC) appreciate the opportunity to comment on the EPA's Proposed Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review. Detailed comments on the proposal are enclosed. If there are any questions concerning the TCEQ's comments, please contact Donna Huff, Deputy Director, Air Quality Division, at 512-239-6628 or donna.huff@tceq.texas.gov.

Sincerely,

A handwritten signature in black ink that reads "Erin E. Chancellor".

Erin E. Chancellor
Interim Executive Director

A handwritten signature in black ink that reads "Wei Wang".

Wei Wang
Executive Director

Enclosure

**COMMENTS ON THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S
(EPA'S) PROPOSED STANDARDS OF PERFORMANCE FOR NEW, RECONSTRUCTED, AND
MODIFIED SOURCES AND EMISSIONS GUIDELINES FOR EXISTING SOURCES: OIL AND
NATURAL GAS SECTOR CLIMATE REVIEW**

I. SUMMARY

On December 6, 2022, the United States Environmental Protection Agency (EPA) published a proposal to update, strengthen, and expand its November 2021 proposal to reduce greenhouse gases (GHGs) (in the form of methane emissions) and volatile organic compounds (VOC) emissions from both new and existing sources in the oil and natural gas industry. The proposed New Source Performance Standards (NSPS) under Federal Clean Air Act (FCAA) §111(b) would reduce emissions of methane and VOC from sources that commence construction, modification, or reconstruction after November 15, 2021. These proposed standards of performance will be in a new subpart, 40 Code of Federal Regulations (CFR) Part 60, Subpart OOOOb (NSPS OOOOb). The proposed Emissions Guidelines (EG) under FCAA §111(d) would limit methane emissions from existing sources built on or before November 15, 2021. The proposed EG will be in a new subpart, 40 CFR Part 60, Subpart OOOOc (EG OOOOc).

The Texas Commission on Environmental Quality (TCEQ) and the Railroad Commission of Texas (RRC) provide the following comments on the proposed rule. Where comments are noted by TCEQ throughout this document, the comment reflects the views of both the TCEQ and the RRC.

II. COMMENTS

A. General

The EPA is exceeding its authority under FCAA §111(d) with the proposed requirement in 40 CFR §60.5363c that standards of performance for designated facilities must be at least *as protective as* the emission guidelines unless the EPA approves alternate standards under 40 CFR §60.5365c.

Under proposed 40 CFR §60.5363c(a)(4), the EPA's proposed requirements for the state plan specify that the standards of performance included in the plan must be at least as protective as the EPA's EGs, unless the EPA approves alternative standards under 40 CFR §60.5365c. The proposed provisions under 40 CFR §60.5365c allow for the EPA to approve less stringent standards of performance. The EPA did not explain in the preamble about the choice of wording in 40 CFR §60.5363c(a)(4). However, protectiveness and stringency are not necessarily equivalent. Further, 40 CFR §60.5365c(e)(1)(vii) requires that, if the less stringent standard is established based on remaining useful life, the increased emissions for the duration of the remaining useful life will not result in negative impacts to the surrounding communities, including those most affected by and vulnerable to the health and environmental impacts of the plan. The TCEQ also notes that in the recently proposed revisions to the state plan implementation regulations in 40 CFR Part 60, Subpart Ba, the EPA proposed to only require states, in calculating a less stringent standard, to consider the potential pollution impacts and benefits of control to communities most affected by and vulnerable to emissions from the designated facility. *See 87 Federal Register* (FR) 79176, 79203 (December 6, 2022). The preamble language associated with 40 CFR §60.5365c(e)(1)(vii) appears to mirror the language proposed with the implementation regulations, stating "...to the extent a designated facility would qualify for a less stringent standard through consideration of remaining useful life and other factors (RULOF), the state, in calculating such

a standard, must consider the potential health and environmental impacts on communities most affected by and vulnerable to the impacts from the designated facility considered in a state plan for RULOF provisions.” See 87 FR 74202, 74824 (December 6, 2022) However, the rule language proposed in 40 CFR §60.5365c(e)(1)(vii) does not require consideration of impacts but actually prohibits a state from adopting a less stringent standard if there are negative impacts.

Additionally, the demonstration required to satisfy 40 CFR §60.5365c(e)(1)(vii) as proposed involves a health and environmental protectiveness evaluation of the local community around each specific facility where the state would consider establishing a less stringent standard. The EPA did not evaluate protectiveness at a local level in establishing the proposed EGs to the degree that 40 CFR §60.5365c(e)(1)(vii) would require the state to demonstrate. As the EPA acknowledges in the preamble (87 FR 74832), FCAA §129 requires state plans for solid waste combustion facilities to be at least as protective as the EPA’s EGs. See FCAA §129(b)(2) (“...the state plan shall be at least as protective as the guideline promulgated by the Administrator...”). However, FCAA §111(d) does not specify the state plan be at least as protective. See FCAA § 111(d)(1) (“... Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.”) The EPA is exceeding its authority by requiring protectiveness reviews if a state proposes less stringent standards for a facility that considers the facility’s remaining useful life. Furthermore, the EPA is also holding the state to a standard of evaluation far beyond that used by the EPA when establishing the proposed emission guidelines. Further, the EPA has not defined negative impacts and, as written, the requirement appears to go beyond health and environmental factors, which could hold the state to evaluating impacts on factors beyond the state’s authority to regulate.

The state plan requirements proposed by the EPA are so onerous and time-consuming as to eviscerate the authority given to states by Congress to consider RULOF in adopting alternative standards for certain sources. The proposal will force states with large numbers of affected sources to adopt the model rule and eliminate the discretion provided in FCAA §111(d). The EPA cannot take away through regulation authority given to states by Congress.

FCAA §111(d) states in relevant part: “Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which the standard applies.” Proposed new 40 CFR §60.5365c requires states intending to apply a less stringent standard on a particular source due to RULOF to provide a multi-faceted demonstration of unreasonable cost, technical infeasibility, and other factors specific to the facility. If the alternative standard is based on remaining useful life, several additional factors must be considered.

For example, proposed 40 CFR §60.5365c(b)(1) requires the state to identify all available control technologies and evaluate each system using the same factors and metrics used by the EPA. States should not be required to evaluate control technology that the EPA has previously excluded from the best system of emission reduction (BSER) on the basis of technological or economic feasibility. The only control technologies that should be relevant to the determination under 40 CFR §60.5365c(b)(1) are control technologies that achieve less emission reductions than the technology determined by the EPA to represent BSER. Further, the requirement that states evaluate technologies using the same factors and metrics is unreasonable because the EPA has not disclosed all factors and metrics used in evaluating all technologies when it determined BSER. Additionally, as discussed previously, the EPA’s

requirement in 40 CFR §60.5365c(e)(1)(vii) concerning negative impacts would force states to perform protectiveness evaluations for any source that the state decides to set an alternate standard based on remaining useful life. Such evaluations could require extensive modeling to determine impacts for the proposed control level as well as EPA's BSER control level.

Texas has a substantial number of oil and gas facilities with many that legitimately cannot cost-effectively or technically meet the applicable EGs because of their age, production capability, location, etc. If only a small fraction of these sources request or require an alternative standard demonstration, it will be virtually impossible to complete and timely submit a state plan while also meeting state rule development requirements and the additional "meaningful engagement" requirements imposed by this rule. For states with considerable oil and gas development, the result will be adoption of the model rule with no opportunity for sources to receive an alternative standard based on RULOF, as the FCAA allows. The EPA's state plan requirements for submitting plans and consideration of RULOF for certain sources is written in such a way that it does not actually "permit" states to do so in practice. Rather than providing a regulatory scheme that allows states to adopt alternative standards based on RULOF, this proposal prohibits many states from utilizing their statutorily given discretion and therefore impermissibly constrains state authority. *See American Corn Growers Assn. v. EPA*, 291 F3d. 1 (D.C. Cir.) (vacating an EPA rule in part because its requirements were "inconsistent with the Act's provisions giving the states broad authority over [Best Available Retrofit Technology] determinations...").

The EPA has not performed a proper Unfunded Mandates Reform Act analysis because the EPA has not provided an actual cost estimate for the impact to the states for development and implementation of the state plan.

The EPA claims in the Unfunded Mandates Reform Act section of the preamble (87 FR 74849) that the burden to the states to develop state plans for the rule is estimated to be below \$100 million in any one year. However, the TCEQ has not been able to identify an actual estimate of the cost impact to states for developing a state plan in the Regulatory Impact Analysis (RIA) of the Supplemental Proposal for the Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review or in any other document posted in the docket. Historically, the EPA has grossly underestimated the costs to the states for federally required actions such as developing a state plan. However, given the broad scope of the rule and extremely large number of affected sources, it would be inaccurate to use prior information collection requests for other FCAA §111(d) state plans to estimate impacts to states. Further, the EPA is imposing new requirements on states for FCAA §111(d) state plans, such as the requirement to demonstrate no negative impacts when setting alternate standards based on remaining useful life. The EPA's proposed requirements will also place a significant burden on investigative staff to review reports and technical infeasibility determinations for flares given the substantial number of affected sources in Texas. The EPA cannot just assume the burden to the states is less than \$100 million. The EPA should perform an information collection request from the states to determine the costs associated with all requirements for the state plan and engage further with the state governments to decrease the cost burden to the states.

The RIA and supplemental analysis are flawed because the social cost of methane (SC-CH4) metric used significantly inflates the climate benefits resulting from this rule. The SC-CH4 metric the EPA uses is artificially high and relies on unrealistic assumptions on the direct benefit to global climate due to the methane reductions anticipated by this rule. The methane emission reductions achieved are a fraction of the emissions of GHGs globally that must be reduced to stabilize global temperatures. Thus, EPA’s metric of climate benefits relies primarily on presumed efforts that will occur internationally and not on the mitigation efforts of this proposal.

Although the EPA claims the monetized benefits analysis using a revised SC-CH4 is “entirely distinct” from the proposed statutory BSEER determinations, this exercise unjustifiably inflates the climate benefits of the proposed regulatory scheme. EPA attempts to justify burdensome requirements across all oil and gas sources by establishing an extremely high cost per ton of methane. If the benefits of the regulation are the avoided cost of GHG emissions on the climate, EPA admits in their sensitivity analysis that these benefits will not be realized by imposition of the regulations in the 2023 to 2035 timeframe*. *See, e.g.,* footnote 50, page. 24, Supplementary Material for the RIA, “While all the RCP [GHG] emission scenarios peak and begin to decline by or shortly after, the end of the century, it is important to note that CO2 concentrations and therefore temperatures, will not stabilize until CO2 emissions decline to zero.” (*citing* Matthews and Caldeira 2008)

Using the SC-CH4 metric is not meaningful for determining global climate benefits from regulating a small fraction of global methane emissions. Methane from domestic oil and gas production, processing, transportation, and storage is less than one-third of total U.S. methane emissions in 2019 and 0.4 percent of total global emissions of all GHGs. By focusing regulation on a small fraction of all GHGs, EPA can only presume climate control programs other countries have not yet committed to develop will occur in the future. ([A]ssessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries.”, RIA p. 69) The ‘benefit’ of avoided climate change cost or damages because of the assumed international methane emission reductions is unquantifiable and uncertain. Yet, the cost of compliance by both oil and gas owner/operators and states is real and immediate.

The unsupportable regulatory stringency and scope of this proposed rule on new and existing sources also places an unjustifiably heavy burden on states for little real benefit to the global climate. The EPA should use a more reliable metric for the cost of uncontrolled methane emissions from the domestic oil and gas industry to conduct a proper cost/benefit analysis of these rules.

The U.S. Supreme Court’s overturn of the Clean Power Plan based on the Major Question Doctrine should caution against EPA overreach in this proposed rulemaking.

The RIA demonstrates that significantly curtailing natural gas from the U.S. (and increasingly foreign) energy portfolio to achieve a stable climate is a major policy question that the FCAA is ill-suited to address. (“[T]he maximum projected decrease in natural gas production exceeds the benchmark for adverse effects, so this analysis indicates the proposed NSPS OOOOb and EG OOOOc constitutes a significant energy action (as defined by EO 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use).” (Regulatory Impact Analysis, EPA-452/R-21-003, p. 4-8, October 2021.) Electric generation from U.S. produced natural gas is a growing segment of the electric energy market both domestically and abroad as coal powered fleets are retired and natural gas demand in Europe and Asia continues to grow. Congress did not intend for the Act to drive such a significant change in the development of domestic energy supply that will have global scale impacts. (“Under our precedents, this is a major questions case. In arguing that FCAA §111(d) empowers it to substantially restructure the American energy market, EPA ‘claim[ed] to

discover in a long-extant statute an unheralded power' representing a 'transformative expansion in [its] regulatory authority.' *West Virginia v. EPA*, 142 S.Ct. 2587, 2610 (2022) *citing* *UARG v. EPA*, 134 S.Ct. 2427 (2014). The FCAA is intended to address and mitigate a real and significant threat to human health and the environment through regulation of domestic emissions. Agencies have only the authority granted to them by Congress and no such grant to address global climate change or transform international energy supply exists in the FCAA. In the RIA, using a metric for cost avoidance that is extremely speculative to weigh against the cost of regulation, and the cost to global natural gas supply, indicates the FCAA's inadequacy for addressing climate change. "The RIA focuses on the elements of this proposal that are likely to result in quantifiable cost or emission changes compared to a baseline without the proposal that incorporates changes to regulatory requirements induced by the Congressional Review Act (CRA) resolution. We estimated the cost, emissions, and benefit impacts for the 2023-2035 period." 87 FR 74712.

The EPA's proposed state plan submittal deadline does not provide states with adequate time to develop and submit state plans. The EPA should take into consideration the limited resources of state environmental agencies and provide additional time. States need a minimum of three years to submit plans.

The EPA is proposing that a submittal deadline of 18 months from finalization of the EGs is sufficient to allow states to meet EPA requirements for state plans and to account for state-specific processes applicable to the development and adoption of a state plan. The EPA's proposed 18-month timeline is based on an evaluation of states' responsiveness to previous FCAA §111(d) EGs, the contrast between the development of FCAA §111(d) plans and FCAA §129 plans, the complexity of the source category and designated facilities, the difference in complexity between FCAA ozone attainment demonstration state implementation plan (SIP) revision requirements and the plan requirements for EG OOOOc, and the need to quickly take action to address critical climate and health and welfare impacts. However, none of those considerations account for the time it will take a large state with an extensive oil and gas industry, like Texas, to develop its list of pertinent stakeholders, let alone meaningfully engage with affected groups and develop the state plan. Even if the EPA supersedes the inventory requirements of 40 CFR §60.25a, the states will still require additional time to conduct technical analyses of the affected sources and determine if any alternate standards will be needed, conduct the substantial early engagement the EPA proposes to require, draft a state plan with accompanying rules, and meet federal, state, and agency requirements for proposing and adopting a state plan and rules of such magnitude.

As the TCEQ previously commented, *at a minimum*, states should have three years for the development and submittal of a state plan under FCAA §111(d), as is given under the statutory and regulatory framework of FCAA §110 for a SIP and considering the EPA's proposed completeness and approval/disapproval determinations would be based on FCAA §110. The TCEQ disagrees with the EPA's view that ozone SIP revisions are more complex than the state plan for this EG. It is true that ozone SIP attainment demonstrations do have many complex aspects, such as photochemical modeling, reasonably available control technology analyses, and reasonably available control measure analyses. However, ozone SIP revisions are typically focused on smaller areas. The significant number of sources covered, the statewide scope of the proposed EG, and the extremely complex and burdensome requirements imposed by the EPA with the supplemental proposal raise serious issues with state plan development and implementation.

Additionally, the TCEQ estimates that approximately nine months would be required for meeting TCEQ administrative procedures, state and federal notice and public hearing requirements, and other administrative requirements for the state plan and associated rulemaking. Of the 18 months the EPA proposes to allow, this leaves only nine months for the

TCEQ to complete all technical analyses required for situations where an alternate standard is applied, conduct the meaningful engagement, and actually draft the state plan and associated rules, which is not sufficient given the number of affected sources. Furthermore, the TCEQ does not have the available resources to take on the work required to complete a state plan within 18 months and cannot reallocate staff resources because available resources are currently performing work necessary to meet FCAA requirements such as air permitting and SIP development. The TCEQ estimates that a minimum of three years is necessary to develop and submit a state plan. Additionally, due to the vast number of affected sources, other complicating factors may arise during the state plan development that could require additional development time. For example, if alternate standards become necessary for larger than expected percentage of affected sources, substantially more technical analyses may be necessary to support the state plan. Therefore, the EPA should provide a mechanism that allows the states to petition for additional time beyond three years. With the additional requirements proposed by the EPA for meaningful public engagement, states may need additional time later and a provision should be added to allow states to request an extension.

The EPA should allow states the time needed to establish appropriate regulatory frameworks to implement the proposed NSPS for GHGs and VOCs.

As stated in the TCEQ's January 31, 2022, comments on the EPA's initial proposal, the TCEQ does not currently have a minor source permitting pathway for methane emissions to be included in a permit authorization. Specifically, 30 Texas Administrative Code (TAC) Chapters 106 and 116 do not allow GHGs to be permitted in Texas for minor sources. In addition, the statutes governing the TCEQ's air permitting program, specifically Texas Health and Safety Code, §382.05102, only allow the TCEQ to authorize GHG emissions to the extent that authorization is required under federal law. Action by the Texas Legislature (which convenes every other year) may be necessary before the TCEQ could implement minor source permitting of GHG emissions.

A potential to emit (PTE) of methane emissions would be used to establish affected facility status for storage vessels; however, without the framework to regulate or authorize methane emissions from minor sources, there is not a current permitting pathway to create federally enforceable limits for methane emissions at either the federal or the state level. Adopting the NSPS without a regulatory framework to create a permitting pathway for methane emissions would result in any oil and gas site that commences construction, reconstruction, or modification after November 15, 2021, to be out of compliance with the NSPS as there would be no basis to create federally enforceable methane limits. The Texas rulemaking process generally requires one to two years, and even after state rulemaking is completed, the SIP revision and approval process for the amended rules would typically take an additional year. The proposed effective date of 60 days after final rule issuance is insufficient for establishing a regulatory framework, and the TCEQ requests to delay the effective date for at least three years until a regulatory framework can be established in the state rules.

The TCEQ supports using the annual emissions inventory data reported by the oil and gas industry as part of the Greenhouse Gas Reporting Program (GHGRP) to fulfill the EG OOOOc state plan emissions inventory requirement for these sources.

The TCEQ supports the EPA's use of GHGRP data to supersede the requirements of 40 CFR §60.25a(a) for the purposes of the proposed emission guidelines so that state plans are not required to include an inventory and emissions data. If the EPA decides instead to require states to collect, assess, and report annual greenhouse gas emissions inventory data, the resource burden would be staggering. Based on previous TCEQ efforts to inventory ozone precursor emissions, approximately 21,000 additional sites would be required to report annually to the TCEQ, a 10-fold increase of the current number of reporting point sources

(2,100). The TCEQ would need to hire 50 additional full-time employees to perform basic quality assurance of reported data, and additional database and information technology (IT) resources would be required to handle the increase in reporting sources. Even with additional employees and adequate IT infrastructure, the TCEQ estimates it would take two to three years to collect and report each year's greenhouse gas data to the EPA due to the immense number of sources.

The EPA's proposed meaningful engagement requirements are burdensome and unnecessary. States are already required to provide public notice and do so through a variety of mechanisms that have been previously approved by the EPA.

The proposed definition of pertinent stakeholders at 40 CFR §60.5366c(b) is not adequate for states to identify individuals or groups with whom meaningful engagement should be conducted for purposes of a state plan. The vagueness of the proposal may increase the likelihood of legal challenges to state plans or state plan disapproval because the EPA's interpretation of the requirements is not clear. The EPA must propose specific criteria that states may use to identify stakeholders as "most" affected as well as acceptable methods for states to use to make such a determination before meaningful engagement requirements are finalized. As proposed, it is not clear how states would identify pertinent stakeholders, what criteria the EPA would use to determine whether pertinent stakeholders identified by states are appropriate, or that the criteria would not change in the future. States, not the EPA, are in the best position to identify pertinent stakeholders for their plans. If the EPA requires reasonable notice and meaningful engagement in state plans, it must clearly describe what would be approvable while allowing states flexibility to meet the requirements. In addition, the EPA must propose and take public comment on the requirements before finalizing them.

Completeness criteria for state plans is found at 40 CFR §60.27a(g) and includes public participation requirements that require states to conduct at least one public hearing after reasonable notice. These criteria are and have been adequate to ensure stakeholder and public participation in the development of the state plan. Therefore, they should not be changed for this plan. Additionally, existing public notice requirements at 40 CFR §60.23a(c)-(f), which do not address meaningful engagement requirements, are appropriate and already adequately provide for public engagement with state actions to develop state plans. It is not evident that adding ill-defined engagement provisions would substantively improve the state plan development process; however, adding such provisions would significantly burden states with new costs associated with attempting to interpret and implement the provisions with no clear criteria for EPA approval.

The TCEQ meets state and federal notice public participation requirements by making materials publicly available, accepting public comments, and publishing public notices of public meetings and rule and state plan revisions. The TCEQ makes the public aware of proposals using a variety of venues including its website, various listservs, newspapers, the *Texas Register*, and social media outlets. In addition, formal public comments can be made electronically, at public hearings, via U.S. Mail or fax, or hand delivery. The TCEQ also amended public notice and participation requirements in 30 TAC Chapters 39 and 55 in 2021 and developed agency public participation and language access plans to ensure meaningful public participation for new actions; changes to agency policies, procedures, general permits, and regulations that may affect the public; and for activities that are likely to have significant interest from the public and the regulated communities. New requirements include alternative language notices for public meetings, interpretation services at public meetings, evaluation of the need to provide responses to comments in alternative languages, the provision of plain-language summaries for proposed projects as well as the translation and posting of the summaries on the commission's website when alternative language publication is required. The EPA has found the TCEQ's public notice and participation measures to be

adequate and offers no defensible reason why public notice and participation opportunities should be changed for this state plan.

While the proposed meaningful engagement requirements are not clearly described, it appears that resources needed to fulfill them will be significant and burdensome to states. Fulfilling meaningful engagement requirements will cause states to incur costs associated with identifying and contacting stakeholders, renting of rooms or spaces for multiple public meetings, travel, and associated staff time. It is also overly burdensome for the EPA to require states to conduct meaningful engagement when adopting the model rule since the EPA already conducted meaningful engagement when setting the standards. Texas is a large state and based on the proposed supplemental rulemaking, there will be a vast number of affected facilities located throughout the state. Further, the proposed 18 months to submit state plans is insufficient with the additional time needed to meet these requirements.

The proposed meaningful engagement requirements and modification of the EPA's interpretation of "reasonable notice" should not be finalized; if the EPA does so, the EPA must provide states with specific criteria for what is required and what would be approvable in a state plan regarding these requirements. To ensure states have adequate opportunity to provide feedback, the EPA should propose and take public comments on a clear definition of pertinent stakeholders and guidance on how to identify pertinent stakeholders and specific requirements for "reasonable notice" for purposes of the state plan. The definition and guidance should be finalized with the supplemental proposal and at least three years before a state plan is due.

B. Technical

The proposed NSPS is lacking clear definitions and will create inconsistent definitions and criteria for determining applicability and modification.

The new NSPS has different applicability and modification definitions than the NSPS OOOOa. As stated in the initial comments, the TCEQ reviews thousands of oil and gas minor source new source review permit projects per year and creating separate classifications within the NSPS based on dates of construction or modification will create additional burdens when reviewing authorizations within the specified legislatively mandated time frames. In the preamble, the EPA provided different scenarios to demonstrate how applicability under the different rules would work. While the TCEQ appreciates these examples, the fact that these examples are needed demonstrates the complexity of these overlapping requirements.

In addition to the applicability definitions, the modification definitions also differ. For example, NSPS OOOOb proposes that a storage vessel modification can be triggered if there is a throughput increase and if the resulting VOC or methane emissions are greater than the specified thresholds. In NSPS OOOOa, the modification definition is tied to a new well, or changes to an existing well. For a site applicable to NSPS OOOOa, any changes to the well that increase throughput will need to be evaluated differently under both rules. These differences in applicability criteria and definitions may cause confusion with both regulators and regulated entities, which again will lead to longer review times for permit applications and compliance evaluations.

The TCEQ also requests that NSPS OOOOb include clear definitions for "oil well" and "gas well" to avoid ambiguity or confusion. States have different definitions of what is considered an oil well or a gas well. For example, the Texas RRC defines cubic foot of gas, gas well, and oil well as follows:

16 TAC §3.79

(6) Cubic foot of gas or standard cubic foot of gas--The volume of gas contained in one cubic foot of space at a standard pressure base and at a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit. Whenever the conditions of pressure and temperature differ from the standard in this definition, conversion of the volume from these conditions to the standard conditions shall be made in accordance with the ideal gas laws, corrected for deviation.

(11) Gas well--Any well:

(A) which produces natural gas not associated or blended with crude petroleum oil at the time of production;

(B) which produces more than 100,000 cubic feet of natural gas to each barrel of crude petroleum oil from the same producing horizon; or

(C) which produces natural gas from a formation or producing horizon productive of gas only encountered in a wellbore through which crude petroleum oil also is produced through the inside of another string of casing or tubing. A well which produces hydrocarbon liquids, a part of which is formed by a condensation from a gas phase and a part of which is crude petroleum oil, shall be classified as a gas well unless there is produced one barrel or more of crude petroleum oil per 100,000 cubic feet of natural gas; and that the term "crude petroleum oil" shall not be construed to mean any liquid hydrocarbon mixture or portion thereof which is not in the liquid phase in the reservoir, removed from the reservoir in such liquid phase, and obtained at the surface as such.

(18) Oil well--Any well which produces one barrel or more crude petroleum oil to each 100,000 cubic feet of natural gas.

The RRC currently monitors approximately 161,000 active oil wells and 87,000 active gas wells (as of December 2022). Without a clear definition of oil well or gas well, the TCEQ and RRC do not know which wells will be affected by the different requirements in NSPS OOOOb and Emission Guidelines OOOOc (e.g., associated gas and liquids unloading requirements). Also, clarification is needed on the reference standard temperature and pressure in the definition of Gas to Oil Ratio in the proposed rule language.

The EPA has requested comments on what is considered a modification for well liquids unloading. The TCEQ agrees that a modification for well liquids unloading can include (1) the first time, in the life of the well, that well liquids unloading occurs, (2) the first time, after fracturing or refracturing a well, that well liquids unloading occurs, or (3) a change in the type or method of well liquids unloading. Ongoing liquids unloading would not be considered a modification, because it is not a physical or operational change to an existing facility.

The TCEQ supports the continued use of 40 CFR §60.18 requirements and temporary controls; however, the continuous pilot requirement is not realistic.

The TCEQ supports the continued use of 40 CFR §60.18 requirements and monitoring to demonstrate 98% destruction efficiency for flares and vendor information for other control devices. TCEQ authorization mechanisms for flares closely match 40 CFR §60.18 requirements and allow for the use of an automatic pilot. The TCEQ recommends that the use of an automatic pilot continues to be an option for non-pressure-assisted flares. Also, many remote sites only have field gas as an option to use in a continuous pilot. Field gas may have a high concentration of hydrogen sulfide, so using a continuous pilot in these situations may lead to increased emissions of hydrogen sulfide and sulfur dioxide. In addition, the remoteness of and lack of electricity for some sites may present logistical barriers complicating or preventing the implementation of continuous monitoring.

The TCEQ supports the use of temporary control devices for situations when associated gas could not be routed to a sales line or used for other beneficial purposes. Some sites may have permanent control devices for these scenarios; however, temporary controls can be used to minimize emissions during planned maintenance, startup, and shutdown activities. Emissions from these temporary controls are permitted as an alternate operating scenario, as a part of normal operations.

The EPA should allow for thermal control of methane and VOC emissions from associated gas from oil wells, and exempt oil wells with associated sour gas from flaring restrictions.

The EPA should allow for thermal control of emissions from these sites, which are often vented to tanks routed to control devices with less than 100% destruction efficiency. The TCEQ believes that further consideration should be given to allow for control methodologies for these sites similar to other oil and gas facilities, including thermal control using flares which typically represent less than 100% destruction efficiency. The EPA should also allow for operations at the oil wells to continue with thermal control during the analysis by the professional engineer and implementation of the recovery strategy. Due to safety concerns, the EPA should explicitly exempt oil wells with associated sour gas from the recovery requirements. The corrosive nature of sour gas greatly restricts available recovery options. Requiring a demonstration by a professional engineer that recovery and reuse are not feasible for oil wells with associated sour gas may place a significant burden on smaller operators. The EPA should also point to available and successfully implemented recovery strategies for sour gas.

The proposed fugitive monitoring requirements go above and beyond current Best Available Control Technology (BACT), and operators will have to comply with many overlapping requirements in TCEQ state permits and NSPS rules. Compliance with the proposed requirements would be especially burdensome and impractical for remote or unmanned locations.

The proposed fugitive monitoring frequency and repair requirements exceed the current BACT requirements for fugitive components. BACT is an emission limitation based on the maximum degree of reduction of pollutants regulated under the FCAA and is reviewed on a case-by-case basis to ensure appropriate emission limitations considering technical practicability and economic reasonableness. The proposed rule would potentially impose fugitive monitoring requirements and monitoring frequencies that exceed current BACT requirements for certain sites.

The proposed rule also presents increased regulatory overlaps and inconsistencies between currently available construction authorization mechanisms and previous NSPS for this source category as related to monitoring requirements. Texas minor source air authorizations (including Permits by Rule (PBR), Standard Permits, and Case-by-case Permits) have established fugitive monitoring programs that differ based on the facility types and quantity of emissions at a site. The table below represents the number of permitted sites under these various mechanisms:

Authorization:	PBR 30 TAC §106.352(a)-(k)	PBR 30 TAC §106.352(l)	Oil and Gas Non-rule Standard Permit	30 TAC §116.620 Standard Permit	Minor Case-by-case
Number of current registered/permited sites:	6,517	27,159	3,646	1,766	21

Texas has many smaller oil and gas sites that may not be subject to registration requirements as part of an authorization under the PBR specified above. Those unregistered (but authorized) sites are not reflected in the totals shown in the table above. Also, many of these sites are already subject to additional monitoring under the previous NSPS (Subparts OOOO or OOOOa). These overlapping requirements make it difficult for the TCEQ and regulated entities to keep track of the applicable regulations and evaluate compliance.

The TCEQ recommends the proposed rule include an alternative monitoring schedule for sites that demonstrate low leakage rates. For example, other NSPS standards (such as 40 CFR Part 60 Subparts VV and VVa) allow owners or operators to reduce the leak monitoring frequency for certain components with low leakage rates. A similar alternative monitoring schedule in the NSPS will assist regulated entities with focusing on more complex sites instead of low-leaking production sites in remote locations.

The proposed rule includes quarterly audio, visual, and olfactory (AVO) monitoring for all well sites. As of December 2022, there are over 287,000 active wells (including oil, gas, and service wells) monitored by the Texas RRC. Many of these are unmanned or minimally staffed well sites in remote locations, presenting potential logistical and compliance issues. Owners or operators of affected sites in remote locations may have difficulty recruiting and retaining sufficient staff to support a regular monitoring program. It will also be burdensome for the TCEQ to conduct additional on-site compliance and enforcement activities.

The EPA should exclude wellhead-only well sites as affected facilities from monitoring requirements.

The sheer number and distribution of wells in Texas makes quarterly AVO monitoring a burden for operators and results in only a slight reduction in emissions. In the proposed preamble, EPA even notes that it is not cost-effective to impose additional inspection costs on every source in hopes of detecting the small percentage of sources that become super-emitters. Additionally, this may place a significant burden on smaller operators. There are numerous small operators for which the costs of complying with the proposed requirements will be high compared to the income from their operations. In Texas alone, over 4,100 operators own and operate 10 or less oil leases and gas wells. Therefore, AVO monitoring of wellhead only sites would likely provide minimal additional reductions compared to cost.

The TCEQ supports the use of emerging technologies as a useful purpose for controlling associated gas.

The EPA solicited comment on the use of emerging technologies that could provide uses for associated gas in a beneficial manner other than routing to a sales line, using as a fuel, or reinjecting the gas. The TCEQ supports emerging technologies as potential methods for controlling emissions from oil and gas facilities and recommends that the rules allow the use of emerging technologies as a recognized method of achieving a beneficial use for associated gas. Some companies use the associated gas as fuel for electric generating units or compress the gas and send it to another site for processing. The TCEQ agrees that useful purpose

should include, but not be limited to, uses or purposes that a purchased fuel or raw material would serve. The TCEQ agrees that useful purpose should not be explicitly defined in the rule language, and that the owner or operator can provide a demonstration or certification that they meet this criterion. Due to the unpredictable nature of technological advancement, it would be shortsighted for EPA to limit this aspect of the rule to only narrowly defined or specified processes or technologies. Certain technologies for reducing methane and other greenhouse gas emissions, such as gas compression for offsite transport, can also result in collateral emissions of other regulated pollutants which are subject to National Ambient Air Quality Standards.

The EPA should provide states additional resources for the implementation of the proposed NSPS and EG.

The TCEQ requests that additional resources be made available to states and regulatory authorities to assist with implementation and enforcement of NSPS OOOOb and EGs OOOOc. Guidance documents, workbooks, reporting forms, templates, flow charts, video tutorials, and other resources would greatly benefit the delegated administrator in implementation of the new monitoring, recordkeeping, and reporting requirements contained within the NSPS. The TCEQ also requests that a guidance document, similar to the small business compliance guide for NSPS OOOOa, be developed and provided as a tool to help the regulated community understand the complex regulatory requirements that this NSPS will incorporate.

The TCEQ requests that a guidance document be available to assist regulated entities with submitting required notifications, data, reports, and approval requests. The guidance should address where and to whom the relevant reports or notifications should be submitted and provide information summarizing deadlines or schedules for each type of report or notification. The TCEQ also requests that a template be available for regulated entities to use to assist in providing required information where applicable.

The reporting requirements are overly burdensome for states and should be revised to reduce the volume of reports submitted.

Given the potentially hundreds of thousands of sites in Texas subject to this proposed rule, the state will not be able to process the number of reports, notifications and requests required to be submitted under this rule. Each report is detailed and extensive. Examples include increment of progress, corrective action plans, well closures plans, notification of intent to close, notification of compliance report, notifications under 40 CFR §§60.7(a)(1), (3), and (4) and §60.15(d), annual reports, performance test reports, semiannual reports, additional reporting under alternative GHG standards for fugitive emissions components designated facilities and covers and closed vent systems, alternate fugitive emission standards, and requests for Alternative Means of Emissions Limitation under 40 CFR §60.5399c. The volume of reports and the amount of information submitted is more than state agencies can reasonably oversee.

The proposed requirements for several types of designated facilities are economically unreasonable and should be revised.

The proposed rule's zero emission limit is an extremely costly and potentially unrealistic standard for rural gas well sites with typical well liquids loading and unloading operations to meet (since it may not be possible to eliminate the emission of every loading and unloading methane molecule). To achieve compliance with this standard, the TCEQ anticipates that industry would have to install expensive vacuum inducing, vapor tight loading, and potentially vapor tight disconnection equipment at each Texas gas well site that loads liquids (and may still not be able to eliminate every molecule of potential methane emissions). We recommend that the EPA consider the economic feasibility in establishing a 40 CFR §60.5390c

control limit and replace the zero-emission standard with a more cost-effective and realistic one.

The EPA's model rule may not have considered individual well economics in establishing universal 40 CFR §60.5391c oil well separator control requirements. The model rule requires the installation of equipment to collect and either repurpose or install 95% effective oil well separator gas controls. However, it does not contain an exemption for an oil well with a low production rate or gas-to-oil ratio (GOR). The installation of new separator gas capture and control equipment for oil wells with a 500 GOR (or less) would capture a maximum 20.8 pounds of gas per standard barrel of oil, which is equivalent to 3.8 tons of gas for each barrel of oil produced every day of the year. Oil well sites with GORs of 500 or less that produce a maximum 10 barrels per day of oil would not produce sufficient quantities to make the installation of proposed separator gas controls cost effective. The TCEQ recommends that an economic evaluation of low production and GOR oil wells be performed to determine well conditions where it would not be economically reasonable to install 40 CFR §60.5391c separator gas controls. Furthermore, we recommend that the proposed rules be updated to exempt wells operations from the 40 CFR §60.5391c separator gas control requirements that are not demonstrated to be economically reasonable.

The model rule requires a capture and 95% effective control system for centrifugal compressors to "central production sites" regardless of their seal configuration. The EPA's Oil and Gas Control Techniques Guidelines (CTG) model rule and current TCEQ rules do not require additional controls for centrifugal compressors with dual dry seal, which are already assumed to be 95% more effective than centrifugal compressors with wet seals. The model rule's additional centrifugal compressor dry seal control requirements are both economically unreasonable and unduly burdensome.

The EPA's Oil and Gas CTG model rule and current TCEQ rules have three control options for reciprocating compressors, including two that simply impose time limits on packing change-outs. Proposed 40 CFR §60.5393c requires packing volumetric flow rate measurements for all affected reciprocating compressors, regardless of when the packing change-outs last occurred. This is unnecessarily burdensome for sources with recently changed packing.

The proposed super-emitter program is overly burdensome for states and should be removed from the final rule.

The TCEQ has an existing process to accept evidence from citizens, and evaluates evidence provided in accordance with agency procedures. State law provides the TCEQ authority to take enforcement action when appropriate. This proposed rule requires receiving, evaluating, and approving requests for verified third parties and solicits information from other entities that will create a potentially extensive additional workload for the TCEQ without additional funding or support. The scope of investigations will broaden and there may be additional investigations triggered by complaints to enforce the super emitter program. Compliance staff will be required to engage in ongoing technical discussions with both the regulated entity and verified third parties to implement the program. The EPA should reconsider the overall effectiveness and necessity of the super-emitter program given the significant resource burden the program will have on states.

If the EPA does not remove the super-emitter program from the final rule, the EPA should significantly revise and clarify the proposed requirements.

The EPA should provide clear guidance on acceptable methods to be used for the detection and quantification of super-emitter leaks. The high-profile nature of such events, and the resources required to respond to them in a timely manner, require well-established methods to ensure accurate identification and quantification of super-emitters.

The EPA needs to clarify the qualifications for third-party reporters in the super-emitter program. The TCEQ agrees that the qualifications of third-party reporters are important and that approved third-party reporters should show proficiency and accuracy in identifying super-emitter leaks. The EPA should provide clear guidance on the requirements to obtain approval as a third-party reporter for the super-emitter program. The EPA should provide draft guidance on the approval requirements for public review and comment before finalization.

The EPA should clarify notification timeframes for the super-emitter program. There have been instances in which entities have documented non-routine emissions utilizing handheld and aerial monitoring technologies, but not notified the TCEQ until months after becoming aware of the event/incident. Timely notification is necessary to ensure the appropriate response to the documented emissions.