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Oil and Gas Alert: U.S. EPA Proposes Amendments to NSPS Rules for the Oil and Natural Gas Industry

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On September 24, 2019, U.S. EPA **proposed** amendments to the 2012 and 2016 New Source Performance Standards for the Oil and Natural Gas Industry under 40 CFR ("2012 NSPS"¹ and "2016 NSPS"², respectively). Following its review of the 2012 NSPS and the 2016 NSPS in response to President Trump's Executive Order on Promoting Energy Independence and Economic Growth³, U.S. EPA determined that some of the requirements under those rules are (1) inappropriate because they affect sources that not appropriately identified as part of the regulated source, and (2) are unnecessary insofar as they impose redundant requirements. The Agency's proposed action consists of a primary proposal and an alternative proposal, each of which are summarized below.

Primary Proposal

U.S. EPA's primary proposal contains two steps. The first step involves the removal of sources in the transmission and storage segment from the oil and natural gas "source category" listed under Section 111 of the Clean Air Act (CAA). U.S. EPA's proposal acknowledges that inclusion of the transmission and storage segment in 2012 and 2016 NSPS rules was in error because the original source category for the oil and gas industry was limited to sources in the production and processing segments up to the point of distribution to gas pipelines and, thus, excluded the transmission and storage segment. U.S. EPA recognized in the proposal that the transmission and storage segment is functionally separate and distinct from the production and processing segments. As such, the Agency would have to make a separate finding that sources in the transmission and storage segment "contributes significantly to air pollution that is anticipated to endanger public health or welfare" in order to include sources in that segment in the source category subject to regulation. In conjunction with the removal of sources in the transmission and storage segment from the oil and natural gas source category, U.S. EPA is also proposing to rescind the emissions limits in the 2012/2016 NSPS for those sources.

The second step of U.S. EPA's primary proposal is to rescind the methane requirements of the NSPS applicable to sources in the production and processing segments of the oil and gas industry. The proposal notes that U.S. EPA lacked a rational basis to establish methane standards in the 2016 NSPS because the methane requirements are "entirely redundant with the existing NSPS for VOC, establish no additional health protections, and are, thus, unnecessary." In addition, U.S. EPA is seeking comments on whether CAA Section 111 requires U.S. EPA to make a pollutant-specific "significant contribution finding" for GHG emissions from the oil and gas industry before such emissions can be regulated under Section 111 and, if so, whether the finding made in the 2016 NSPS satisfied that requirement.

Alternative Proposal

U.S. EPA's alternative proposal is to rescind the methane requirements in the 2016 NSPS without any action that would affect the scope of the source category. As such, the alternative proposal would not eliminate sources in the transmission and storage segment from the source category subject to the 2012 NSPS and the 2016 NSPS.

Comments on the proposed amendments to the 2012 and 2016 NSPS are due on or before November 25, 2019.

¹ 40 CFR Part 60, Subpart OOOO.

² 40 CFR Part 60, Subpart OOOOa.

³ The Executive Order directed agencies to review existing regulations that potentially "burden the development or use of domestically produced energy resources," and to rescind or suspend regulatory requirements if appropriate.