

ORAL ARGUMENT NOT YET SCHEDULED

No. 24-1054 (lead, consolidated with Nos. 24-1059, 24-1101,
24-1103, 24-1111, 24-1114, 24-1115, 24-1116, 24-1117)

**In the United States Court of Appeals
For the District of Columbia Circuit**

State of Texas, *et al.*,
Petitioners,

v.

United States Environmental Protection Agency, and Michael S. Regan,
in his official capacity as Administrator, United States Environmental
Protection Agency,
Respondents.

On Petition for Review from Final Rule of the
United States Environmental Protection Agency,
89 Fed. Reg. 16,820 (Mar. 8, 2024)

**BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED
STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF
PETITIONERS**

(Names and addresses of counsel appear inside cover)

December 2, 2024

Andrew R. Varcoe
Stephanie A. Maloney
U.S. CHAMBER LITIGATION
CENTER
1615 H Street, NW
Washington, DC 20062

Corinne V. Snow
Aaron Silberman
VINSON & ELKINS LLP
2200 Pennsylvania Avenue NW
Suite 500 West
Washington, DC 20037
csnow@velaw.com
asilberman@velaw.com
(202) 639-6500

Eric Groten
VINSON & ELKINS LLP
200 West 6th Street
Suite 2500
Austin, TX 78701
egroten@velaw.com
(512) 542-8709

*Counsel for Amicus Curiae the Chamber of Commerce
of the United States of America*

**CERTIFICATE AS TO PARTIES, RULINGS,
AND RELATED CASES**

In accordance with D.C. Circuit Rule 28(a)(1), *amicus curiae* states as follows:

I. Parties, Intervenors, and *Amici Curiae*

Except for the following, all parties, intervenors, and *amici* appearing in this Court are listed in the Brief for Industry Petitioners at pages i-iii.

Amicus curiae in support of Industry Petitioners is the Chamber of Commerce of the United States of America.

II. Rulings Under Review

References to the rulings at issue appear in the Brief for Industry Petitioners at pages iii-iv.

III. Related Cases

This case has been consolidated with the following cases pertaining to the review of the same EPA final rule: 24-1059, 24-1101, 24-1103, 24-1111, 24-1114, 24-1115, 24-1116, 24-1117. *Amicus curiae* is aware of the following related cases before this Court: *Air Alliance Houston, et al. v. EPA, et al.*, No. 24-1118 (D.C. Cir.), which was severed from these consolidated cases per this Court's September 4, 2024, Order; and

American Petroleum Institute, et al. v. EPA, et al., No. 24-1289 (D.C. Cir.), which consolidates challenges to certain aspects of the Final Rule in Case Nos. 24-1116 and 24-1117 that this Court severed from these consolidated cases in its September 4, 2024, Order.

Amicus curiae is unaware of any other related cases pending in this Court or any other court that involve the same Final Rule.

CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America (“Chamber”) is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

**CERTIFICATE OF COUNSEL REGARDING AUTHORITY TO
FILE AND SEPARATE BRIEFING**

The parties have consented to the filing of this *amicus curiae* brief.

Pursuant to D.C. Circuit Rule 29(d), the Chamber of Commerce of the United States of America (“Chamber”) is not aware of other entities or individuals intending to participate as *amici* to represent the perspectives and interests of the broader U.S. business community. The Chamber’s counsel has endeavored to avoid duplication in briefing.

Date: December 2, 2024

Respectfully submitted,

/s/ Corinne V. Snow

Corinne V. Snow
VINSON & ELKINS LLP
2200 Pennsylvania Avenue NW
Suite 500 West
Washington, DC 20037
Phone: (202) 639-6622
Email: csnow@velaw.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES ...	i
CORPORATE DISCLOSURE STATEMENT.....	iii
CERTIFICATE OF COUNSEL REGARDING AUTHORITY TO FILE AND SEPARATE BRIEFING	iv
TABLE OF CONTENTS.....	v
TABLE OF AUTHORITIES	vii
GLOSSARY OF TERMS.....	x
STATUTES AND REGULATIONS	1
INTRODUCTION AND INTEREST OF <i>AMICUS CURIAE</i>	1
BACKGROUND	5
<i>A. The Clean Air Act makes a critical distinction between older “existing” sources and new, modified, or reconstructed sources.....</i>	<i>5</i>
<i>B. The New Source Performance Standards program applies to specific “facilities” within a larger site.</i>	<i>8</i>
<i>C. EPA has traditionally defined a modification to apply on an individual facility-by-facility basis.</i>	<i>10</i>
<i>D. EPA is not writing on a blank slate and has previously regulated much of the same equipment subject to the Final Rule.....</i>	<i>11</i>
SUMMARY OF ARGUMENT	13
ARGUMENT.....	15
I. EPA failed to adequately explain its departures from longstanding EPA rules and practices for identifying “modifications” to facilities regulated under CAA section 111.	15
II. EPA’s approach to redefining process controller, pump, and storage vessel affected facilities significantly expands the regulatory scope.	17

III.	EPA gave little or no weight to important reliance interests when it redefined “modification” for process controller, pump, and storage vessel affected facilities and abandoned longstanding EPA exemptions to the general definition of “modification.”	21
A.	<i>EPA disregarded longstanding reliance interests by adopting unreasonable changes to the definition of a “modification” of a process controller or pump.</i>	21
B.	<i>EPA disregarded longstanding reliance interests by adopting an unreasonable approach to identifying “modifications” to a storage vessel affected facility.....</i>	23
C.	<i>EPA disregarded longstanding reliance interests by unreasonably removing the no-capital-expenditure exemption for storage vessel modifications.....</i>	25
IV.	EPA’s failure to provide a reasoned explanation for its changes was particularly important given the reliance interests at stake.	28
CONCLUSION.....		32
CERTIFICATE OF COMPLIANCE.....		34
CERTIFICATE OF SERVICE.....		35

TABLE OF AUTHORITIES

Cases

<i>Clean Air Council v. Sunoco, Inc. (R&M)</i> , No. CIV.A. 02-1553 GMS, 2003 WL 1785879 (D. Del. Apr. 2, 2003).	9, 21
<i>Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.</i> , 591 U.S. 1 (2020).....	16, 28, 29, 32
<i>Encino Motorcars, LLC v. Navarro</i> , 579 U.S. 211 (2016).....	15, 16, 23, 28, 32
<i>FCC v. Fox Television Stations, Inc.</i> , 556 U.S. 502 (2009).....	16, 28
<i>Int’l Org. of Masters, Mates & Pilots, ILA, AFL-CIO v. Nat’l Lab. Rels.</i> <i>Bd.</i> , 61 F.4th 169 (D.C. Cir. 2023)	31
<i>MediNatura, Inc. v. Food & Drug Admin.</i> , 998 F.3d 931 (D.C. Cir. 2021).....	28
<i>U.S. Sugar Corp. v. EPA</i> , 113 F.4th 984 (D.C. Cir. 2024)	15
<i>Wisconsin Elec. Power Co. v. Reilly</i> , 893 F.2d 901 (7th Cir. 1990)	26, 29

Statutes

42 U.S.C. § 7411	5
42 U.S.C. § 7411(a)(2)	6
42 U.S.C. § 7411(a)(4)	8, 10, 22, 24, 25
42 U.S.C. § 7411(a)(6)	6
42 U.S.C. § 7411(a)–(b)	6
42 U.S.C. § 7411(b)	6
42 U.S.C. § 7411(d)	6
42 U.S.C. § 7411(d)(1)	6, 7
42 U.S.C. § 7411(d)(2)	6
42 U.S.C. § 7607(d)(9)	15

Regulations

40 C.F.R. § 60.14	22
40 C.F.R. § 60.14(a).....	10, 22
40 C.F.R. § 60.14(e).....	26
40 C.F.R. § 60.14(e)(2)	11
40 C.F.R. § 60.14(f)	27
40 C.F.R. § 60.2.....	9
40 C.F.R. § 60.5365(d)(1)–(3).....	17
40 C.F.R. § 60.5365(e).....	20
40 C.F.R. § 60.5365a(d)(1)–(2).....	18
40 C.F.R. § 60.5365a(e).....	20, 24
40 C.F.R. § 60.5365a(h)(1)–(2).....	19
40 C.F.R. § 60.5365b	5
40 C.F.R. § 60.5365b(d).....	17, 22
40 C.F.R. § 60.5365b(d)(1)	22
40 C.F.R. § 60.5365b(e).....	15, 19
40 C.F.R. § 60.5365b(e)(3)(ii)(A)–(B).....	24
40 C.F.R. § 60.5365b(e)(3)(ii)(C).....	24
40 C.F.R. § 60.5365b(h)	19, 22
40 C.F.R. § 60.5365b(h)(1)	22
40 C.F.R. § 60.5430	17
40 C.F.R. § 60.5430b	17, 19
86 Fed. Reg. 63,110 (Nov. 15, 2021).....	18
87 Fed. Reg. 74,702 (Dec. 6, 2022)	18, 19
89 Fed. Reg. 16,820 (Mar. 8, 2024)	2, 5, 13, 23, 25, 26, 27, 31

Other Authorities

EPA, <i>Regulatory Impact Analysis of the Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review</i> , EPA-452/R-23-013 (Dec. 1, 2023).....	13
H.R. Rep. No. 95-294 (1977)	30
U.S. Chamber of Commerce, Comment on Proposed Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review (Docket ID No. EPA-HQ-OAR-2021-0317-0001) (Comment ID EPA-HQ-OAR-2021-0317-0921) (Jan. 31, 2022).....	4
U.S. Chamber of Commerce, Comment on Supplemental Proposed Rule, Environmental Protection Agency: Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources; Oil and Natural Gas Sector Climate Review (Docket ID No. EPA-HQ-OAR-2021-0317-1460) (Comment ID EPA-HQ-OAR-2021-0317-2301) (Feb. 13, 2023)	4
U.S. Chamber of Commerce, <i>Small Business Needs Certainty</i> (Oct. 13, 2023)	30
U.S. Chamber of Commerce, <i>The Business Community Needs Regulatory Certainty Now More Than Ever</i> (Feb. 10, 2021).....	30

GLOSSARY OF TERMS

CAA or Act	Clean Air Act
Chamber	Chamber of Commerce of the United States of America
EPA or Agency	U.S. Environmental Protection Agency
Final Rule	Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 89 Fed. Reg. 16,820 (Mar. 8, 2024)
NSPS	New Source Performance Standards
OOOO	NSPS 40 C.F.R. Part 60 Subpart OOOO
OOOOa	NSPS 40 C.F.R. Part 60 Subpart OOOOa
OOOOb	NSPS 40 C.F.R. Part 60 Subpart OOOOb

STATUTES AND REGULATIONS

Except for the regulations included in the Chamber's addendum, all applicable statutes and regulations are contained in Industry Petitioners' addendum.

INTRODUCTION AND INTEREST OF *AMICUS CURIAE*¹

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

¹ No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

The business community needs predictable, smart regulations to make the investments necessary to meet consumer needs and market demand. This is particularly true when shifts in the regulatory regime could require major capital investments in new equipment, and often even more so when the shift requires the retrofitting of existing infrastructure. The Clean Air Act (“CAA” or the “Act”) recognizes these reliance interests by treating “existing” emissions sources differently than new, modified, or reconstructed emissions sources. In the rule under review, EPA undermined that important dichotomy by altering the definitions of a “modification” and certain “affected facilities,” such that existing equipment at many older, long-operating sites will become subject to the more onerous requirements of the Agency’s newest iteration of air emission regulations for the oil and gas sector. Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 89 Fed. Reg. 16,820, 17,043–47 (Mar. 8, 2024) (“Final Rule”).

EPA’s novel interpretation of the relevant provisions of the Act is problematic not just for the oil and gas industry, but for all others in the industrial economy regulated under CAA section 111, who are subject to

those same provisions. The Chamber respectfully submits this brief to offer important background context on this issue and the practical implications of EPA's changes.

The Chamber is well situated to aid this Court's review. The Chamber represents members of the oil and natural gas sector itself, as well as many other members outside that sector that are subject to the relevant provisions of section 111. The Chamber's members need clarity and certainty that they will not be required to make unexpected and expensive alterations to their facilities due to shifting regulatory requirements that could not be predicted at the time each facility was built. More broadly, the Chamber represents numerous companies in the wider U.S. economy that require reliable access to affordable products dependent on sectors subject to section 111.

The Chamber supports policies that reduce greenhouse-gas emissions as much and as quickly as reasonably possible, consistent with the pace of innovation and the feasibility of implementing large-scale technical change. The Chamber also has a strong interest in ensuring that agencies comply with the law. As expressed in the Chamber's comments on

EPA's November 2021 Notice² and December 2022 Supplemental Proposed Rule,³ the Chamber supports the smart, balanced, and direct regulation, consistent with law, of methane emissions from the oil and natural gas sector, as an important element of the nation's overall commitment to continue reducing its greenhouse-gas emissions. Consistent with the Chamber's comments, which were intended to help EPA develop an effective, durable rule, the Chamber respectfully submits that certain aspects of the Final Rule violate the CAA, are counter to longstanding EPA practice, and will detrimentally impact the U.S. business community. These aspects of the Final Rule should be vacated.⁴

² See U.S. Chamber of Commerce, Comment on Proposed Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review (Docket ID No. EPA-HQ-OAR-2021-0317-0001) (Comment ID EPA-HQ-OAR-2021-0317-0921) (Jan. 31, 2022), <https://tinyurl.com/2mf3xtfs>.

³ See U.S. Chamber of Commerce, Comment on Supplemental Proposed Rule, Environmental Protection Agency: Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources; Oil and Natural Gas Sector Climate Review (Docket ID No. EPA-HQ-OAR-2021-0317-1460) (Comment ID EPA-HQ-OAR-2021-0317-2301) (Feb. 13, 2023), <https://tinyurl.com/5262jp9s>.

⁴ This brief does not express a view on any other issues raised by the Petitioners in their challenges to the Final Rule.

BACKGROUND

The Chamber first offers this context to explain the important role that a “modification” plays as a trigger of obligations under section 111 of the Act.

A. The Clean Air Act makes a critical distinction between older “existing” sources and new, modified, or reconstructed sources.

EPA’s Final Rule establishes (1) New Source Performance Standards (“NSPS”) Subpart OOOOb (“OOOOb”) for certain sources of air emissions that “commence construction, modification, or reconstruction after December 6, 2022,” 40 C.F.R. § 60.5365b, and (2) emissions guidelines for states to follow under the CAA to develop, submit, and implement state plans to create performance standards for “existing” sources in the crude oil and natural gas source category. *See* 89 Fed. Reg. at 16,820.

The distinction between new, modified, and reconstructed sources (regulated under OOOOb) and “existing” sources (subject to state regulation based on EPA’s emissions guidelines) is required by statute: under CAA section 111, EPA is, with limited exceptions, authorized to directly regulate only new, modified, and reconstructed stationary sources of air pollutants. *See generally* 42 U.S.C. § 7411. Importantly, unless a

“State fails to submit” or “enforce” a “satisfactory plan,” *id.* § 7411(d)(2), EPA’s authority to directly regulate such sources does not apply to “existing” sources—here, those sources that commenced construction on or before December 6, 2022, and that have not been “modified” or “reconstructed” since that date. Rather, once EPA identifies source categories subject to regulation, determines a “best system of emission reduction” for such “existing” sources, and promulgates “standards of performance,” *id.* § 7411(a)–(b), states are required to submit “plan[s]” to “establish[] [their own] standards of performance for any existing source for any air pollutant,” *id.* § 7411(d)(1); *see also* State Petitioners’ Motion to Stay, ECF No. 2049412, Case No. 24-1054, at 2. In crafting the CAA scheme, Congress thus established pivotal roles for both EPA and the states.

The CAA explicitly recognizes that older “existing” stationary sources should be treated differently than new, modified, or reconstructed sources. *See* 42 U.S.C. § 7411(a)(2), (6) (defining “new source” and “existing source” separately); *see also id.* § 7411(b), (d) (establishing “[l]ist of categories of stationary sources; standards of performance” and “[s]tandards of performance for existing sources” separately). This is due

in part to the additional costs associated with retrofitting an “existing” source, as compared to a “new” source. It also protects the reliance interests for sources already in operation, ensuring that those sources will continue to have a predictable regulatory regime. *See also id.* § 7411(d)(1) (requiring EPA’s regulations to allow states that are “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”). Specifically, it often is much more expensive and technologically challenging to retrofit an existing source with newly developed control technologies than to incorporate those technologies into a source that is otherwise being newly built or meaningfully modified.

What specific actions will be considered “modifications” or “reconstructions” that alter the regulatory treatment of existing facilities therefore makes an enormous difference to the owners and operators of regulated facilities, as well as their customers. Companies make significant up-front investments in equipment with the understanding that they will be able to continue to operate that equipment, including by

making modest adjustments to operations, without inadvertently triggering a much more costly regulatory scheme.

To protect the distinction between older, existing sources and the new, modified, and reconstructed sources that are subject to the NSPS program, Congress placed specific guardrails on what could be considered a “modification.” Under the statute, in language that has been unchanged since 1970, “modification’ means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.” *Id.* § 7411(a)(4). Thus, a modification occurs only when **both** (1) there is a “physical change” or “change in the method of operation” at “a stationary source,” **and** (2) that change “increases the amount of any air pollutant emitted by such source or . . . results in the emission of any air pollutant not previously emitted.” *Id.*

B. The New Source Performance Standards program applies to specific “facilities” within a larger site.

To understand the impact of EPA’s definitions in the Final Rule, it is important to briefly review how the New Source Performance Standards (“NSPS”) program is designed to regulate air emissions. “The NSPS

program does not regulate entire plant sites Instead, it regulates individual pieces of equipment and process units (‘affected facilities’) within a plant.” *Clean Air Council v. Sunoco, Inc. (R&M)*, No. CIV.A. 02-1553 GMS, 2003 WL 1785879, at *7 (D. Del. Apr. 2, 2003) (citing 40 C.F.R. § 60.2). Notably, multiple “affected facilities” can be co-located at a single site. Many sites can contain both new and existing “affected facilities” and equipment that is not subject to NSPS regulation. *See id.* at *7–8 (rejecting NSPS applicability claims where plaintiff’s “allegations [did not] involve[] the flare” at a site, which was “[t]he only potential ‘affected facility’ identified in [the] Count,” and instead pertained to other equipment, including “a sulfur recovery unit”). Sensibly, the modification of one “affected facility” does *not* modify any other co-located facilities. This has been a feature of the NSPS regulations for decades. This means, for example, that a new storage vessel (subject to NSPS regulations) can be co-located at a site with an existing process controller (not subject to NSPS regulations). It also means that a storage vessel could be modified (made subject to NSPS regulations) without also modifying a pump co-located at the same site. In other words, a modification to a single “facility” at a site does not modify other equipment at the broader site. Historically, this

meant that site-wide capital upgrades (*e.g.*, in the form of expensive retrofits) were not required whenever a single piece of emitting equipment was changed in such a way as to increase emissions. Instead, the new regulatory requirements triggered by a modification were tethered to the specific equipment that was modified.

C. EPA has traditionally defined a modification to apply on an individual facility-by-facility basis.

To understand why EPA's approach to "modification" in the Final Rule is so problematic, it is important to first understand how EPA has historically approached this issue under the NSPS program.

EPA has issued regulations under the section 111 NSPS program for decades. Since the 1970s, EPA has used a longstanding general definition of "modification," meaning "any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant." 40 C.F.R. § 60.14(a). Tracking the definition in the CAA that it implements (42 U.S.C. § 7411(a)(4), quoted *supra*), this regulatory provision requires more than a physical or operational change; it also requires an increase in emissions rate from the individual affected facility. *See id.*

The general definition of “modification” also includes several exemptions and clarifications, some of which are akin to *de minimis* exemptions to ensure that minor changes do not trigger more onerous federal regulation. For example, “[a]n increase in production rate of an existing facility, if that increase can be accomplished without a capital expenditure on that facility,” is not considered a modification under EPA’s longstanding general definition. *Id.* § 60.14(e)(2).

In addition to this general regulatory definition for “modification,” EPA has also introduced more specific definitions of a “modification” that apply only to certain “affected facilities.” As explained further below, EPA has done so in the Final Rule—in a novel and problematic way—for several OOOOb “affected facilities.”

D. EPA is not writing on a blank slate and has previously regulated much of the same equipment subject to the Final Rule.

This is not the first time EPA has issued air regulations for new, modified, or reconstructed sources in the oil and gas sector. Indeed, two prior iterations of these rules remain on the books. NSPS Subpart OOOO (“OOOO”) applies to facilities for which construction, modification, or reconstruction commenced from August 23, 2011, to September 18, 2015,

and NSPS Subpart OOOOa (“OOOOa”) applies to facilities for which construction, modification, or reconstruction commenced from September 19, 2015, to December 6, 2022. Broadly, these two regulatory regimes cover much of the same equipment as OOOOb. But EPA deviated from these regimes in several meaningful ways when it defined the facilities (*i.e.*, the equipment) subject to OOOOb.

Relevant here, these previous regulatory regimes (like OOOOb) have included provisions for a “storage vessel affected facility,” “pump affected facility,” and a “process controller affected facility” (previously called a “pneumatic controller affected facility”). A storage vessel is essentially a large tank that holds petroleum products or water that was used in the production process. These tanks are often found in groups (called batteries) and are piped together so that air emissions from the stored liquids can be directed to a centralized location. A process controller can take different forms but is basically a type of device found throughout various equipment at a site that helps control and monitor operations of the equipment. A single site may have more than a dozen (each) of these controllers, pumps, and tanks (*i.e.*, dozens of these objects taken together). As described further below, for the first time EPA decided to treat *groups* of tanks, pumps, and

controllers as *collective* “affected facilities” in the Final Rule rather than assessing each tank, pump, or controller individually. In doing so, EPA significantly broadened the rule’s reach.

SUMMARY OF ARGUMENT

The Final Rule upsets longstanding industry reliance interests by applying new source standards to equipment that is not modified (or new or reconstructed). EPA deviated from the language of the CAA, the prior NSPS regulations for oil and gas operations, and its own preexisting definitions of “modifications” and certain “affected facilities.” The practical impact of EPA’s shift is that thousands of long-operating, existing sites will require costly capital upgrades and retrofitting. *See generally* EPA, *Regulatory Impact Analysis of the Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review*, EPA-452/R-23-013, at 2-31, 2-46 to 2-49 (Dec. 1, 2023), [tinyurl.com/5p2e24cy](https://www.tinyurl.com/5p2e24cy); *cf. id.* at 4-78 to 4-79; 89 Fed. Reg. at 17,024. EPA failed to provide a sufficient justification for disturbing businesses’ reliance interests and jeopardizing their up-front investments, and it failed to explain why alternative measures are inadequate. It is arbitrary and capricious for an agency to

make such a fundamental change without carefully considering the impacts on regulated parties' reliance on the previous, longstanding regulatory regime. EPA did not engage in this kind of consideration here. Its changes should be vacated.

First, EPA shifted its approach to defining “process controller affected facility,” “pump affected facility,” and “storage vessel affected facility,” so that now the “facility” encompasses a *group* (rather than individual pieces) of equipment at a site, such that a modification to or addition of any individual tank, pump, or controller will also trigger a modification (and thus regulation) for other *unaffected* tanks, pumps, or controllers within that group.

Second, EPA expanded the scope of what actions constitute a “modification” of each of these facilities, so that it will become far more likely that a modification (and thus regulation under OOOOb) will be triggered. EPA did so with respect to both a “process controller affected facility” and “pump affected facility” by making the mere addition of one pump or controller itself a “modification” of all pumps or controllers at the site. For a “storage vessel affected facility,” EPA eliminated the longstanding no-capital-expenditure exemption found in the more general

definition of a “modification” and introduced a new, overly broad definition that violates the CAA. *See generally* 40 C.F.R. § 60.5365b(e); *see also* Industry Petitioners’ Br. at 35–38.

While EPA’s sleight of hand may appear subtle, these changes allow EPA to drastically expand the scope of its jurisdiction and impose additional, onerous requirements on older, existing equipment without adequate justification. Allowing EPA to engage in such practices is likely to have harmful spillover effects on other industries that are similarly regulated under section 111 of the CAA. The Court should vacate these aspects of the Final Rule.

ARGUMENT

I. EPA failed to adequately explain its departures from longstanding EPA rules and practices for identifying “modifications” to facilities regulated under CAA section 111.

Though agencies may change their positions from time to time, *see, e.g., Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016), when an agency does so, it must consider the public’s reliance on the prior position. *See* 42 U.S.C. § 7607(d)(9); *U.S. Sugar Corp. v. EPA*, 113 F.4th 984, 991 n.7 (D.C. Cir. 2024) (“[J]udicial review under the Clean Air Act is ‘essentially the same’ as judicial review under the APA” (citation omitted)); *Dep’t of*

Homeland Sec. v. Regents of the Univ. of Cal., 591 U.S. 1, 33 (2020). Specifically, when the “prior policy has engendered serious reliance interests,” the agency must provide “a more detailed justification” than if it were writing on a “blank slate.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). The agency *must* take those reliance interests into account, even if they are not “legally cognizable” rights or even “[j]ustified.” *Regents*, 591 U.S. at 30–33.

Here, EPA failed to adequately engage with and provide adequate explanations for several aspects of the Final Rule that upset longstanding industry reliance interests—namely, the Final Rule’s changes to the scope of process controller, pump, and storage vessel affected facilities and the actions that will count as modifications of those facilities. *See generally Encino Motorcars*, 579 U.S. at 222. As discussed further below, EPA was not writing on a “blank slate” when it promulgated the Final Rule, and its justifications of significant changes were insufficient. *Fox Television Stations, Inc.*, 556 U.S. at 515. EPA was “required to assess whether there were reliance interests” in its previous, applicable NSPS regulations, “determine whether they were significant, and weigh any such interests against competing policy concerns.” *Regents*, 591 U.S. at 33. EPA did not

do so. The Final Rule is accordingly arbitrary and capricious and should be vacated with respect to these issues.

II. EPA’s approach to redefining process controller, pump, and storage vessel affected facilities significantly expands the regulatory scope.

A process controller is “an automated instrument used for maintaining a process condition such as liquid level, pressure, delta-pressure and temperature.” 40 C.F.R. § 60.5430b. In other words, process controllers are devices found throughout various equipment at a site that help control and monitor operations. The Final Rule defines “[e]ach process controller affected facility,” with certain exceptions, as “*the collection* of natural gas-driven process controllers at a well site, centralized production facility, onshore natural gas processing plant, or a compressor station.” *Id.* § 60.5365b(d) (emphasis added).

This stands in noticeable contrast to EPA’s historic treatment of these controllers. Under the earliest (and still effective) iteration of the rule called “OOOO,” a “pneumatic controller affected facility” is defined as “a *single* continuous bleed natural gas-driven pneumatic controller.” *Id.* § 60.5365(d)(1)–(3) (emphasis added); *see also id.* § 60.5430. Similarly, OOOOa (the next iteration of the rule) defines a “pneumatic controller

affected facility” as “a **single** continuous bleed natural gas-driven pneumatic controller,” with controllers “not located at a natural gas processing plant . . . operating at a natural gas bleed rate greater than” a specified amount. *Id.* § 60.5365a(d)(1)–(2) (emphasis added). Indeed, even the original proposal for *this* OOOOb rule defined “a designated facility in terms of pneumatic controllers [a]s each **individual** natural gas driven pneumatic controller . . . that vents to the atmosphere.” Proposed Rule: Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 86 Fed. Reg. 63,110, 63,208 (Nov. 15, 2021) (emphasis added). It was not until the supplemental notice of proposed rulemaking for this Final Rule that EPA suddenly changed its tune, announcing that “defining the pneumatic controller affected facility as the collection of all controllers at a site is the most practical approach,” after over a decade of taking a different approach. Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 87 Fed. Reg. 74,702, 74,756 (Dec. 6, 2022). In making this change, EPA acknowledged that, “[u]nder the previous approach of treating each controller on an

individual basis, the installation or replacement of a pneumatic controller would have resulted in that singular controller being a new source and an affected facility subject to NSPS OOOOb.” *Id.* In other words, no one controller would impact the status of any other controller at the same site.

Likewise, the Final Rule defines a “pump affected facility” as “the **collection** of natural gas-driven pumps at a well site, centralized production facility, onshore natural gas processing plant, or a compressor station.” 40 C.F.R. § 60.5365b(h) (emphasis added). By contrast, the prior OOOOa definition was “**each** pneumatic pump affected facility, which is a **single** natural gas-driven diaphragm pump.” *Id.* § 60.5365a(h)(1)–(2) (emphasis added).

The Final Rule takes a similarly new approach to the tanks used at these sites to store hydrocarbons or water used in the production process. The rule does so by defining a “storage vessel affected facility” as “a tank battery” that has the potential for air emissions at certain thresholds. *Id.* § 60.5365b(e). A tank battery, in turn, “means a **group** of all storage vessels that are manifolded together for liquid transfer.” *Id.* § 60.5430b(emphasis added); *see also id.* (defining a “storage vessel” to

mean “a tank or other vessel that contains an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water”).

As with pumps and process controllers, the fact that the Final Rule’s definition for storage vessel affected facilities is oriented around tank *batteries* (*i.e.*, groups), which include *all* storage vessels manifolded together, differentiates OOOOb from its predecessors. Under OOOO (the still-effective first iteration of the rule), a “storage vessel affected facility” was “a *single* storage vessel” with potential volatile organic compounds emissions above a specified level. *Id.* § 60.5365(e) (emphasis added). Similarly, OOOOa (the other prior iteration of the rule) defines this type of facility as “a *single* storage vessel” that falls within certain prescribed parameters. *Id.* § 60.5365a(e) (emphasis added). Here OOOOb, in contrast, expands the scope of EPA’s regulatory reach by treating groups of tanks as parts of a single affected facility, rather than treating individual tanks as individual affected facilities.

EPA’s shift in position significantly expands its regulatory authority: By redefining the “affected facility” to include groupings of what were previously and appropriately considered *individual* facilities, EPA has ensured that the “modification” of any one piece of equipment at a site will

trigger a modification of other similar pieces of equipment at the same site. *See generally Sunoco*, 2003 WL 1785879, at *7 (highlighting that “[t]he NSPS program regulates *individual* pieces of equipment and process units (‘affected facilities’) within a plant” (emphasis added)).

In other words, an operator may no longer, for example, modify a single process controller at a site, or add one controller, without subjecting all other controllers at the site to the more onerous OOOOb requirements.

III. EPA gave little or no weight to important reliance interests when it redefined “modification” for process controller, pump, and storage vessel affected facilities and abandoned longstanding EPA exemptions to the general definition of “modification.”

A. EPA disregarded longstanding reliance interests by adopting unreasonable changes to the definition of a “modification” of a process controller or pump.

As noted above, different actions undertaken at a regulated facility can be considered a “modification.” EPA’s section 111 NSPS regulations include a longstanding general definition of a “modification,” which provides that with certain exceptions, “any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of section 111 of the Act.” 40

C.F.R. § 60.14(a). With respect to process controller and pump affected facilities, in addition to the general regulatory definition for “modification” in § 60.14, the Final Rule provides that a modification of all process controllers or pumps at a site occurs “when the number of natural gas-driven process controllers in [that] facility is increased by one or more.” *Id.* § 60.5365b(d)(1); *see also id.* § 60.5365b(h)(1).

Combined with the Final Rule’s expanded definition of process controller and pump affected facilities, this means that adding a single process controller or pump at a site will trigger OOOOb’s requirements for every existing process controller or pump on every piece of equipment already present at that same site. *See id.* § 60.5365b(d), (h). This, in turn, would force owners and operators, who otherwise would not be subject to regulation under the OOOOb regime, to unexpectedly have to retrofit site-wide areas, at potentially great expense. Simply put, adding one pump or process controller does not amount to any of the preexisting pumps or controllers having been “physical[ly] change[d]” such that source-wide retrofits would be justified in these circumstances. 42 U.S.C. § 7411(a)(4); *see also* Industry Petitioners’ Br. at 35–36. Moreover, by deviating so substantially from previous NSPS regulations with respect to

modifications of pump or process controller affected facilities, EPA upset more than a decade of industry reliance interests in the longstanding treatment of these types of facilities. As further explained in Part IV below, EPA failed to sufficiently justify its changes. *See generally Encino Motorcars*, 579 U.S. at 222 (highlighting “decades of industry reliance on the Department’s prior policy” in concluding that the Department of Labor’s explanation for a regulation “fell short of the agency’s duty to explain why it deemed it necessary to overrule its previous position”); 89 Fed. Reg. at 16,930 (EPA’s responses to comments regarding modification and reconstruction criteria for process controller affected facilities).

B. EPA disregarded longstanding reliance interests by adopting an unreasonable approach to identifying “modifications” to a storage vessel affected facility.

In the context of storage vessel affected facilities, the Final Rule also does not apply the longstanding general “modification” definition and instead provides several specific scenarios that EPA deemed a modification. Each is unlawful.

The new definition includes any time a “storage vessel is added to an existing tank battery,” as well as when “[o]ne or more storage vessels are replaced such that the cumulative storage capacity of the existing tank

battery increases.” 40 C.F.R. § 60.5365b(e)(3)(ii)(A)–(B). As discussed above, these changes, in tandem with the expanded definition of a “storage vessel affected facility,” mean that the addition of a tank, or changes to a single tank, will trigger new requirements for the entire group of tanks, whereas historically the NSPS requirements apply only to the specific tank that had been added or altered. For instance, under OOOOa, the addition of a vessel would have triggered a modification only if that individual vessel emitted more than six tons per year of volatile organic compounds. *See id.* § 60.5365a(e). As further explained in Part IV below, EPA did not sufficiently justify this break with past practice. And notably, this definition of a modification does not require an increase of emissions, thus placing it in tension with the statutory text. *See* 42 U.S.C. § 7411(a)(4) (modification “means any physical change in, or change in the method of operation of, a stationary source ***which increases the amount of any air pollutant emitted . . .***” (emphasis added)).

Next, existing tank batteries that are located “at well sites or centralized production facilities” and “receive[] additional crude oil, condensate, intermediate hydrocarbons, or produced water throughput from actions” will be deemed modified. 40 C.F.R. § 60.5365b(e)(3)(ii)(C).

But a change in throughput (*i.e.*, the amount of oil or gas moving through a vessel) does not necessarily require a physical change or a change in method of operations, as required by the CAA. *See* 42 U.S.C. § 7411(a)(4); Industry Petitioners’ Br. at 37–38. Additional throughput in a tank battery could be caused by entities other than the owner or operator of a facility, or by modifying actions undertaken at *entirely different* facilities (*e.g.*, hydraulic fracturing occurring at a well that changes the throughput received at, and stored in, a nearby tank battery). Indeed, in the Final Rule, EPA acknowledged a comment highlighting this very scenario, and the Agency was only able to offer that it “must defer to a case-by-case determination on the comment.” 89 Fed. Reg. at 16,982. EPA’s response to the comment is inadequate, and the change made in the Final Rule is unlawful.

C. EPA disregarded longstanding reliance interests by unreasonably removing the no-capital-expenditure exemption for storage vessel modifications.

Not only did EPA adopt a legally infirm definition of “modification” for storage vessel affected facilities, it also removed the longstanding and common-sense exemptions available in the general NSPS modification definition. For example, under the general definition, routine

maintenance, replacement, and repair; increases in operational hours; and “[a]n increase in production rate of an existing facility, if that increase can be accomplished without a capital expenditure on that facility” “shall not, by themselves, be considered modifications.” 40 C.F.R. § 60.14(e); *see also Wisconsin Elec. Power Co. v. Reilly*, 893 F.2d 901, 905 (7th Cir. 1990) (noting that, “[a]s a result” of “the potential reach of the[] [NSPS and Prevention of Significant Deterioration] modification provisions,” “EPA promulgated specific exceptions to the modification provisions,” including the exceptions noted above (citing 40 C.F.R. § 60.14(e))).

By removing these longstanding exemptions, EPA undermined the reliance interests of owners and operators and made it far more likely that minor increases in production rates will now be deemed to cause a modification of an entire battery of tanks. EPA’s justification for doing so is insufficient.

In the preamble to the Final Rule, EPA reviewed a number of comments highlighting the tension between the Agency’s previous treatment of “modifications” and OOOOb’s contrasting approaches to actions qualifying as modifications. *See* 89 Fed. Reg. at 16,979–81. Despite acknowledging that the no-capital-expenditure “exemption was

promulgated in 1975, *at the early stage* of the EPA’s CAA section 111 rulemaking,” thus allowing reliance interests to grow for decades, *see id.* at 16,981 (emphasis added), EPA explained that it “disagrees . . . that . . . modification[s] based on increased throughput . . . must be accompanied by a capital expenditure,” because the CAA’s “definition does not . . . make[] . . . reference to ‘capital expenditure,’” and “therefore, [this] is [not] requisite to determining modification,” *id.* EPA also seemed to imply (without clearly stating) that the exemption might be a better fit for “traditional industrial plants” than for categories “such as the crude oil and natural gas source category,” *id.* – but EPA did not explain why, if this is the case, EPA had respected the exemption in promulgating its previous OOOO and OOOOa rules regulating that very category. EPA also noted that EPA is authorized to promulgate “[s]pecial provisions” that “shall supersede any conflicting provisions of” Subpart A’s section on modifications, 40 C.F.R. § 60.14(f). 89 Fed. Reg. at 16,981. But that is beside the point: EPA is *always* authorized to modify its regulations. That does not negate EPA’s duty to consider reliance interests in promulgating new regulations. Here, EPA flunked that requirement: it failed to carefully consider regulated

parties' longstanding reliance interests concerning the exemption and to justify changing the exemption.

IV. EPA's failure to provide a reasoned explanation for its changes was particularly important given the reliance interests at stake.

The case law is clear that, where EPA “changes [its] policy, it must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.” *MediNatura, Inc. v. Food & Drug Admin.*, 998 F.3d 931, 940 (D.C. Cir. 2021) (quoting *Encino Motorcars*, 579 U.S. at 221–22); *see also Encino Motorcars*, 579 U.S. at 222 (“In such cases it is not that further justification is demanded by the mere fact of policy change; but that a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.” (quoting *Fox Television Stations*, 556 U.S. at 515–16)).

This is true here, where, for example, EPA was building on decades of preceding regulations recognizing the no-capital-expenditure exemption. The Agency had to say more than it did when deviating from its historic practices. *See Regents*, 591 U.S. at 33 (“[B]ecause DHS was ‘not writing on a blank slate,’ . . . it *was* required to assess whether there were reliance interests, determine whether they were significant, and weigh any such

interests against competing policy concerns.” (citation omitted)). EPA was “required to assess whether there were reliance interests” in its historic treatment of this exemption, “determine whether they were significant, and weigh any such interests against competing policy concerns.” *Id.* This is *especially true* in circumstances such as these, where EPA’s shifts will result in expensive retrofitting, based even on *de minimis* changes, at sites already long in operation.

As noted above, section 111 of the CAA distinguishes between existing sources and those that can be subject to new regulation under the NSPS program. This is particularly important because businesses need to know what the regulatory requirements will be at the time they invest in costly equipment, so that they are not required to make unpredictable and far more expensive retrofits to existing operations in the future, absent some knowable and predictable action on their part. *See Reilly*, 893 F.2d at 909 (explaining, “[c]onsistent with its balanced approach, Congress chose not to subject existing plants to the requirements of NSPS and [Prevention of Significant Deterioration]. Members of the House recognized that ‘[b]uilding control technology into new plants at time of construction will *plainly be less costly than* [sic] *requiring retrofit* when pollution control

ceilings are reached,” and acknowledging “existing plants that have been modified are subject to the Clean Air Act programs at issue” (alterations in original) (emphasis added) (quoting H.R. Rep. No. 95-294, at 185 (1977)); H.R. Rep. No. 95-294, at 184–85 (1977) (discussing the “purposes” of “Section 111-New Source Standards of Performance,” and noting that “[a] third purpose of the best technology requirement for new sources is related to . . . achiev[ing] long-term cost savings. Building control technology into new plants at time of construction will *plainly be less costly [than] requiring retrofit* when pollution ceilings are reached” (emphasis added)).

Businesses must be able to reliably predict upcoming capital expenditures so that they can appropriately budget for such costs well in advance. *See generally* U.S. Chamber of Commerce, *Small Business Needs Certainty* (Oct. 13, 2023) (discussing “a common thread” in 2023 “among the small business founders and owners . . . [being] the need for certainty,” and noting that “small business owners are looking for reassurance that they can operate their businesses without having to worry about unnecessary changes from the government”), tinyurl.com/bdh9vddr; U.S. Chamber of Commerce, *The Business Community Needs Regulatory Certainty Now More Than Ever* (Feb. 10, 2021) (“Poorly designed and

overly burdensome regulations not only layer on onerous requirements, paperwork, and legal liability to large and small businesses, but they dampen needed investments in areas such as infrastructure”), tinyurl.com/yuszvuvvm.

In the changes made in the Final Rule, EPA undermined its longstanding scheme that protects already-operating sites from making expensive retrofits. If allowed to stand, EPA’s actions here could set a dangerous precedent for other industries regulated under the NSPS program that also depend on regulatory certainty and clarity when designing their facilities and budgeting for upcoming capital expenses.

Given the important reliance interests at stake, EPA’s half-hearted discussion of its changes in the Final Rule failed to meet its burden in justifying the changes. *See generally* 89 Fed. Reg. at 16,979–83 (addressing comments received on the Final Rule’s approach to modifications of storage vessel affected facilities); *id.* at 16,930 (addressing comments received on the Final Rule’s approach to modifications of process controller affected facilities); *cf. Int’l Org. of Masters, Mates & Pilots, ILA, AFL-CIO v. Nat’l Lab. Rels. Bd.*, 61 F.4th 169, 179–80 (D.C. Cir. 2023) (explaining that agency “must [have] acknowledge[d] that ‘longstanding policies may have

engendered serious reliance interests that must be taken into account,’ as failure to do so renders the new rule arbitrary and capricious,” and determining that agency “adopted its new rule with no regard for the parties’ reliance interests,” without “consider[ing] the sweeping impact of its new rule or explain[ing] why existing case law does not govern,” and thus made an arbitrary and capricious decision (quoting *Regents*, 591 U.S. at 30)).

EPA failed to meet its burden with respect to the above-mentioned changes in OOOOb: EPA did not adequately establish it was “cognizant” of industry’s longstanding reliance interests in EPA’s previous approaches to these issues, and EPA did not sufficiently offer “good reasons” to overcome those interests. *Encino Motorcars*, 579 U.S. at 221–22. As a result, the portions of the Final Rule related to these changes are arbitrary and capricious.

CONCLUSION

For the foregoing reasons, and for the reasons stated by Industry Petitioners, this Court should vacate the portions of the Final Rule discussed above.

Respectfully submitted,

/s/ Corinne V. Snow

Andrew R. Varcoe
Stephanie A. Maloney
U.S. CHAMBER LITIGATION
CENTER
1615 H Street, NW
Washington, DC 20062

Corinne V. Snow
Aaron Silberman
VINSON & ELKINS LLP
2200 Pennsylvania Avenue NW
Suite 500 West
Washington, DC 20037
csnow@velaw.com
asilberman@velaw.com
(202) 639-6500

Eric Groten
VINSON & ELKINS LLP
200 West 6th Street
Suite 2500
Austin, TX 78701
egroten@velaw.com
(512) 542-8709

*Counsel for Amicus Curiae the Chamber of Commerce
of the United States of America*

December 2, 2024

CERTIFICATE OF COMPLIANCE

This brief contains 6,306 words excluding the parts of the brief that Federal Rule of Appellate Procedure 32(f) and D.C. Circuit Rule 32(e)(1) exempt. The brief thus complies with Federal Rules of Appellate Procedure 32(g) and 29(a)(5), as well as D.C. Circuit Rule 32(e)(3), because the word count does not exceed the 6,500 words permitted under those rules.

The brief also complies with Federal Rule of Appellate Procedure 32(a)(5)'s typeface requirements and Federal Rule of Appellate Procedure 32(a)(6)'s type style requirements because the brief has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook 14-point font.

/s/ Corinne V. Snow

Corinne V. Snow
Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that, on December 2, 2024, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the District of Columbia Circuit via the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by that system.

/s/ Corinne V. Snow

Corinne V. Snow
Counsel for Amicus Curiae

ADDENDUM OF STATUTES AND REGULATIONS

TABLE OF CONTENTS

<u>Regulations</u>	<u>Page</u>
40 C.F.R. § 60.14.....	A-1
40 C.F.R. § 60.5365.....	A-4
40 C.F.R. § 60.5365(e).....	A-5
40 C.F.R. § 60.5365a.....	A-8
40 C.F.R. § 60.5365a(e).....	A-9
40 C.F.R. § 60.5365a(h)(1)–(2).....	A-12
40 C.F.R. § 60.5430.....	A-14

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 60. Standards of Performance for New Stationary Sources (Refs & Annos)
Subpart A. General Provisions

40 C.F.R. § 60.14

§ 60.14 Modification.

Currentness

(a) Except as provided under paragraphs (e) and (f) of this section, any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of section 111 of the Act. Upon modification, an existing facility shall become an affected facility for each pollutant to which a standard applies and for which there is an increase in the emission rate to the atmosphere.

(b) Emission rate shall be expressed as kg/hr of any pollutant discharged into the atmosphere for which a standard is applicable. The Administrator shall use the following to determine emission rate:

(1) Emission factors as specified in the latest issue of "Compilation of Air Pollutant Emission Factors," EPA Publication No. AP-42, or other emission factors determined by the Administrator to be superior to AP-42 emission factors, in cases where utilization of emission factors demonstrates that the emission level resulting from the physical or operational change will either clearly increase or clearly not increase.

(2) Material balances, continuous monitor data, or manual emission tests in cases where utilization of emission factors as referenced in paragraph (b)(1) of this section does not demonstrate to the Administrator's satisfaction whether the emission level resulting from the physical or operational change will either clearly increase or clearly not increase, or where an owner or operator demonstrates to the Administrator's satisfaction that there are reasonable grounds to dispute the result obtained by the Administrator utilizing emission factors as referenced in paragraph (b)(1) of this section. When the emission rate is based on results from manual emission tests or continuous monitoring systems, the procedures specified in appendix C of this part shall be used to determine whether an increase in emission rate has occurred. Tests shall be conducted under such conditions as the Administrator shall specify to the owner or operator based on representative performance of the facility. At least three valid test runs must be conducted before and at least three after the physical or operational change. All operating parameters which may affect emissions must be held constant to the maximum feasible degree for all test runs.

(c) The addition of an affected facility to a stationary source as an expansion to that source or as a replacement for an existing facility shall not by itself bring within the applicability of this part any other facility within that source.

(d) [Reserved]

(e) The following shall not, by themselves, be considered modifications under this part:

- (1) Maintenance, repair, and replacement which the Administrator determines to be routine for a source category, subject to the provisions of paragraph (c) of this section and § 60.15.
 - (2) An increase in production rate of an existing facility, if that increase can be accomplished without a capital expenditure on that facility.
 - (3) An increase in the hours of operation.
 - (4) Use of an alternative fuel or raw material if, prior to the date any standard under this part becomes applicable to that source type, as provided by § 60.1, the existing facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in section 111(a)(8) of the Act, shall not be considered a modification.
 - (5) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial.
 - (6) The relocation or change in ownership of an existing facility.
- (f) Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this section.
- (g) Within 180 days of the completion of any physical or operational change subject to the control measures specified in paragraph (a) of this section, compliance with all applicable standards must be achieved.
- (h) No physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification for the purposes of this section provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this section above the maximum hourly emissions achievable at that unit during the 5 years prior to the change.
- (i) Repowering projects that are awarded funding from the Department of Energy as permanent clean coal technology demonstration projects (or similar projects funded by EPA) are exempt from the requirements of this section provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this section above the maximum hourly emissions achievable at that unit during the five years prior to the change.
- (j)(1) Repowering projects that qualify for an extension under section 409(b) of the Clean Air Act are exempt from the requirements of this section, provided that such change does not increase the actual hourly emissions of any pollutant regulated under this section above the actual hourly emissions achievable at that unit during the 5 years prior to the change.
- (2) This exemption shall not apply to any new unit that:

(i) Is designated as a replacement for an existing unit;

(ii) Qualifies under section 409(b) of the Clean Air Act for an extension of an emission limitation compliance date under section 405 of the Clean Air Act; and

(iii) Is located at a different site than the existing unit.

(k) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project is exempt from the requirements of this section. A temporary clean coal control technology demonstration project, for the purposes of this section is a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plan for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(l) The reactivation of a very clean coal-fired electric utility steam generating unit is exempt from the requirements of this section.

Credits

[40 FR 58419, Dec. 16, 1975, amended at 43 FR 34347, Aug. 3, 1978; 45 FR 5617, Jan. 23, 1980; 57 FR 32339, July 21, 1992; 65 FR 61750, Oct. 17, 2000]

SOURCE: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988; 57 FR 32338, July 21, 1992; 58 FR 40591, July 29, 1993; 60 FR 65384, Dec. 19, 1995; 62 FR 8328, Feb. 24, 1997; 62 FR 48379, Sept. 15, 1997; 64 FR 7463, Feb. 12, 1999; 65 FR 78275, Dec. 14, 2000; 72 FR 59204, Oct. 19, 2007; 87 FR 18706, March 31, 2022; 87 FR 32090, May 27, 2022, unless otherwise noted.

AUTHORITY: 42 U.S.C. 7401 et seq.

Notes of Decisions (43)

Current through November 27, 2024, 89 FR 94594. Some sections may be more current. See credits for details.

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 60. Standards of Performance for New Stationary Sources (Refs & Annos)
Subpart Oooo. Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification, or Reconstruction Commenced After August 23, 2011, and on or Before September 18, 2015 (Refs & Annos)

40 C.F.R. § 60.5365

§ 60.5365 Am I subject to this subpart?

Effective: May 7, 2024

[Currentness](#)

You are subject to the applicable provisions of this subpart if you are the owner or operator of one or more of the onshore affected facilities listed in paragraphs (a) through (g) of this section for which you commence construction, modification, or reconstruction after August 23, 2011, and on or before September 18, 2015. An affected facility must continue to comply with the requirements of this subpart until it begins complying with a more stringent requirement, that applies to the same affected facility, in an approved, and effective, state or Federal plan that implements subpart OOOOc of this part, or modifies or reconstructs after December 6, 2022, and thus becomes subject to subpart OOOOb of this part.

(a) Each gas well affected facility, which is a single natural gas well.

(b) Each centrifugal compressor affected facility, which is a single centrifugal compressor using wet seals that is located between the wellhead and the point of custody transfer to the natural gas transmission and storage segment. A centrifugal compressor located at a well site, or an adjacent well site and servicing more than one well site, is not an affected facility under this subpart.

(c) Each reciprocating compressor affected facility, which is a single reciprocating compressor located between the wellhead and the point of custody transfer to the natural gas transmission and storage segment. A reciprocating compressor located at a well site, or an adjacent well site and servicing more than one well site, is not an affected facility under this subpart.

(d)(1) For the oil production segment (between the wellhead and the point of custody transfer to an oil pipeline), each pneumatic controller affected facility, which is a single continuous bleed natural gas-driven pneumatic controller operating at a natural gas bleed rate greater than 6 standard cubic feet per hour.

(2) For the natural gas production segment (between the wellhead and the point of custody transfer to the natural gas transmission and storage segment and not including natural gas processing plants), each pneumatic controller affected facility, which is a single continuous bleed natural gas-driven pneumatic controller operating at a natural gas bleed rate greater than 6 standard cubic feet per hour.

(3) For natural gas processing plants, each pneumatic controller affected facility, which is a single continuous bleed natural gas-driven pneumatic controller.

(e) Each storage vessel affected facility, which is a single storage vessel located in the oil and natural gas production segment, natural gas processing segment or natural gas transmission and storage segment, and has the potential for VOC emissions equal to or greater than 6 tons per year (tpy) as determined according to this section by October 15, 2013, for Group 1 storage vessels and by April 15, 2014, or 30 days after startup (whichever is later) for Group 2 storage vessels, except as provided in paragraphs (e)(1) through (4) of this section. The potential for VOC emissions must be calculated using a generally accepted model or calculation methodology, based on the maximum average daily throughput determined for a 30-day period of production prior to the applicable emission determination deadline specified in this section. The determination may take into account requirements under a legally and practically enforceable limit in an operating permit or other requirement established under a Federal, State, local or Tribal authority.

(1) For each new, modified or reconstructed storage vessel receiving liquids pursuant to the standards for gas well affected facilities in § 60.5375, including wells subject to § 60.5375(f), you must determine the potential for VOC emissions within 30 days after startup of production.

(2) A storage vessel affected facility that subsequently has its potential for VOC emissions decrease to less than 6 tpy shall remain an affected facility under this subpart.

(3) For storage vessels not subject to a legally and practically enforceable limit in an operating permit or other requirement established under Federal, state, local or tribal authority, any vapor from the storage vessel that is recovered and routed to a process through a VRU designed and operated as specified in this section is not required to be included in the determination of VOC potential to emit for purposes of determining affected facility status, provided you comply with the requirements in paragraphs (e)(3)(i) through (iv) of this section.

(i) You meet the cover requirements specified in § 60.5411(b).

(ii) You meet the closed vent system requirements specified in § 60.5411(c).

(iii) You maintain records that document compliance with paragraphs (e)(3)(i) and (ii) of this section.

(iv) In the event of removal of apparatus that recovers and routes vapor to a process, or operation that is inconsistent with the conditions specified in paragraphs (e)(3)(i) and (ii) of this section, you must determine the storage vessel's potential for VOC emissions according to this section within 30 days of such removal or operation.

(4) The following requirements apply immediately upon startup, startup of production, or return to service. A storage vessel affected facility that is reconnected to the original source of liquids is a storage vessel affected facility subject to the same requirements that applied before being removed from service. Any storage vessel that is used to replace any storage vessel affected facility is subject to the same requirements that apply to the storage vessel affected facility being replaced.

(5) A storage vessel with a capacity greater than 100,000 gallons used to recycle water that has been passed through two stage separation is not a storage vessel affected facility.

(f) The group of all equipment, except compressors, within a process unit is an affected facility.

(1) Addition or replacement of equipment for the purpose of process improvement that is accomplished without a capital expenditure shall not by itself be considered a modification under this subpart.

(2) Equipment associated with a compressor station, dehydration unit, sweetening unit, underground storage vessel, field gas gathering system, or liquefied natural gas unit is covered by §§ 60.5400, 60.5401, 60.5402, 60.5421, and 60.5422 of this subpart if it is located at an onshore natural gas processing plant. Equipment not located at the onshore natural gas processing plant site is exempt from the provisions of §§ 60.5400, 60.5401, 60.5402, 60.5421, and 60.5422 of this subpart.

(3) The equipment within a process unit of an affected facility located at onshore natural gas processing plants and described in paragraph (f) of this section are exempt from this subpart if they are subject to and controlled according to subparts VVa, GGG or GGGa of this part.

(g) Sweetening units located at onshore natural gas processing plants that process natural gas produced from either onshore or offshore wells.

(1) Each sweetening unit that processes natural gas is an affected facility; and

(2) Each sweetening unit that processes natural gas followed by a sulfur recovery unit is an affected facility.

(3) Facilities that have a design capacity less than 2 long tons per day (LT/D) of hydrogen sulfide (H₂S) in the acid gas (expressed as sulfur) are required to comply with recordkeeping and reporting requirements specified in § 60.5423(c) but are not required to comply with §§ 60.5405 through 60.5407 and §§ 60.5410(g) and 60.5415(g) of this subpart.

(4) Sweetening facilities producing acid gas that is completely reinjected into oil-or-gas-bearing geologic strata or that is otherwise not released to the atmosphere are not subject to §§ 60.5405 through 60.5407, 60.5410(g), 60.5415(g), and 60.5423 of this subpart.

(h) The following provisions apply to gas well facilities that are hydraulically refractured.

(1) A gas well facility that conducts a well completion operation following hydraulic fracturing is not an affected facility, provided that the requirements of § 60.5375 are met. For purposes of this provision, the dates specified in § 60.5375(a) do not apply, and such facilities, as of October 15, 2012, must meet the requirements of § 60.5375(a)(1) through (4).

(2) A well completion operation following hydraulic fracturing at a gas well facility not conducted pursuant to § 60.5375 is a modification to the gas well affected facility.

(3) Refracturing of a gas well facility does not affect the modification status of other equipment, process units, storage vessels, compressors, or pneumatic controllers located at the well site.

(4) A gas well facility initially constructed after August 23, 2011, and on or before September 18, 2015 is considered an affected facility regardless of this provision.

Credits

[78 FR 58435, Sept. 23, 2013; 79 FR 79036, Dec. 31, 2014; 80 FR 48268, Aug. 12, 2015; 81 FR 35896, June 3, 2016; 85 FR 57069, Sept. 14, 2020; 89 FR 17035, March 8, 2024]

SOURCE: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988; 57 FR 32338, July 21, 1992; 58 FR 40591, July 29, 1993; 60 FR 65384, Dec. 19, 1995; 62 FR 8328, Feb. 24, 1997; 62 FR 48379, Sept. 15, 1997; 64 FR 7463, Feb. 12, 1999; 65 FR 78275, Dec. 14, 2000; 72 FR 59204, Oct. 19, 2007; 77 FR 49542, Aug. 16, 2012; 81 FR 35896, June 3, 2016; 85 FR 57069, Sept. 14, 2020; 87 FR 18706, March 31, 2022; 87 FR 32090, May 27, 2022, unless otherwise noted.

AUTHORITY: 42 U.S.C. 7401 et seq.

Current through November 27, 2024, 89 FR 94594. Some sections may be more current. See credits for details.

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 60. Standards of Performance for New Stationary Sources (Refs & Annos)
Subpart Ooooo. Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After September 18, 2015 and on or Before December 6, 2022 (Refs & Annos)

40 C.F.R. § 60.5365a

§ 60.5365a Am I subject to this subpart?

Effective: May 7, 2024

[Currentness](#)

You are subject to the applicable provisions of this subpart if you are the owner or operator of one or more of the onshore affected facilities listed in paragraphs (a) through (j) of this section, that is located within the Crude Oil and Natural Gas source category, as defined in § 60.5430a, for which you commence construction, modification, or reconstruction after September 18, 2015, and on or before December 6, 2022. Facilities located inside and including the Local Distribution Company (LDC) custody transfer station are not subject to this subpart. An affected facility must continue to comply with the requirements of this subpart until it begins complying with a more stringent requirement, that applies to the same affected facility, in an approved, and effective, state or Federal plan that implements subpart OOOOc of this part, or modifies or reconstructs after December 6, 2022, and thus becomes subject to subpart OOOOb of this part.

(a) Each well affected facility, which is a single well that conducts a well completion operation following hydraulic fracturing or refracturing. The provisions of this paragraph do not affect the affected facility status of well sites for the purposes of § 60.5397a. The provisions of paragraphs (a)(1) through (4) of this section apply to wells that are hydraulically refractured:

(1) A well that conducts a well completion operation following hydraulic refracturing is not an affected facility, provided that the requirements of § 60.5375a(a)(1) through (4) are met. However, hydraulic refracturing of a well constitutes a modification of the well site for purposes of paragraph (i)(3)(iii) of this section, regardless of affected facility status of the well itself.

(2) A well completion operation following hydraulic refracturing not conducted pursuant to § 60.5375a(a)(1) through (4) is a modification to the well.

(3) Except as provided in § 60.5365a(i)(3)(iii), refracturing of a well, by itself, does not affect the modification status of other equipment, process units, storage vessels, compressors, pneumatic pumps, or pneumatic controllers.

(4) A well initially constructed after September 18, 2015, and on or before December 6, 2022, that conducts a well completion operation following hydraulic refracturing is considered an affected facility regardless of this provision.

(b) Each centrifugal compressor affected facility, which is a single centrifugal compressor using wet seals. A centrifugal compressor located at a well site, or an adjacent well site and servicing more than one well site, is not an affected facility under this subpart.

(c) Each reciprocating compressor affected facility, which is a single reciprocating compressor. A reciprocating compressor located at a well site, or an adjacent well site and servicing more than one well site, is not an affected facility under this subpart.

(d) Each pneumatic controller affected facility:

(1) Each pneumatic controller affected facility not located at a natural gas processing plant, which is a single continuous bleed natural gas-driven pneumatic controller operating at a natural gas bleed rate greater than 6 scfh.

(2) Each pneumatic controller affected facility located at a natural gas processing plant, which is a single continuous bleed natural gas-driven pneumatic controller.

(e) Each storage vessel affected facility, which is a single storage vessel as specified in paragraph (e)(1), (2), or (3) of this section.

(1) A single storage vessel that commenced construction, reconstruction, or modification after September 18, 2015, and on or before November 16, 2020, is a storage vessel affected facility if its potential for VOC emissions is equal to or greater than 6 tons per year (tpy) as determined according to this paragraph (e)(1). The potential for VOC emissions must be calculated using a generally accepted model or calculation methodology, based on the maximum average daily throughput (as defined in § 60.5430a) determined for a 30-day period prior to the applicable emission determination deadline specified in paragraphs (e)(2)(i) and (ii) of this section, except as provided in paragraph (e)(5)(iv). The determination may take into account requirements under a legally and practicably enforceable limit in an operating permit or other requirement established under a Federal, state, local, or tribal authority.

(2) Except as specified in paragraph (e)(3) of this section, a single storage vessel that commenced construction, reconstruction or modification after November 16, 2020, is a storage vessel affected facility if the potential for VOC emissions is equal to or greater than 6 tpy as determined according to paragraph (e)(2)(i) or (ii) of this section, except as provided in paragraph (e)(5)(iv) of this section. The determination may take into account requirements under a legally and practicably enforceable limit in an operating permit or other requirement established under a Federal, state, local, or tribal authority. The potential for VOC emissions is calculated on an individual storage vessel basis and is not averaged across the number of storage vessels at the site.

(i) For each storage vessel receiving liquids pursuant to the standards for well affected facilities in § 60.5375a, including wells subject to § 60.5375a(f), you must determine the potential for VOC emissions within 30 days after startup of production of the well, except as provided in paragraph (e)(5)(iv) of this section. The potential for VOC emissions must be calculated for each individual storage vessel using a generally accepted model or calculation methodology, based on the maximum average daily throughput, as defined in § 60.5430a, determined for a 30-day period of production.

(ii) For each storage vessel located at a compressor station or onshore natural gas processing plant, you must determine the potential for VOC emissions prior to startup of the compressor station or onshore natural gas processing plant using either method described in paragraph (e)(2)(ii)(A) or (B) of this section.

(A) Determine the potential for VOC emissions using a generally accepted model or calculation methodology and based on the throughput established in a legally and practicably enforceable limit in an operating permit or other requirement established under a Federal, state, local, or tribal authority; or

(B) Determine the potential for VOC emissions using a generally accepted model or calculation methodology and based on projected maximum average daily throughput. Maximum average daily throughput is determined using a generally accepted engineering model (e.g., volumetric condensate rates from the storage vessels based on the maximum gas throughput capacity of each producing facility) to project the maximum average daily throughput for the storage vessel.

(3) If a storage vessel battery, which consists of two or more storage vessels, meets all of the design and operational criteria specified in paragraphs (e)(3)(i) through (iv) of this section through legally and practicably enforceable standards in a permit or other requirement established under Federal, state, local, or tribal authority, then each storage vessel in such storage vessel battery is a storage vessel affected facility.

(i) The storage vessels must be manifolded together with piping such that all vapors are shared among the headspaces of the storage vessels;

(ii) The storage vessels must be equipped with a closed vent system that is designed, operated, and maintained to route the vapors back to the process or to a control device;

(iii) The vapors collected in paragraph (e)(3)(i) of this section must be routed back to the process or to a control device that reduces VOC emissions by at least 95.0 percent; and

(iv) The VOC emissions, averaged across the number of storage vessels in the battery meeting all of the criteria of paragraphs (e)(3)(i) through (iii) of this section, are equal to or greater than 6 tpy.

(v) If a storage vessel battery meeting all of the criteria specified in paragraphs (e)(3)(i) through (iii) of this section through legally and practicably enforceable standards in a permit or other requirements established under Federal, state, local, or tribal authority, emits less than 6 tpy of VOC emissions averaged across the number of storage vessels in the battery, none of the storage vessels in the battery are storage vessel affected facilities.

(4) A storage vessel affected facility that subsequently has its potential for VOC emissions decrease to less than 6 tpy shall remain an affected facility under this subpart.

(5) For storage vessels not subject to a legally and practicably enforceable limit in an operating permit or other requirement established under Federal, state, local, or tribal authority, any vapor from the storage vessel that is recovered and routed

to a process through a VRU designed and operated as specified in this section is not required to be included in the determination of potential for VOC emissions for purposes of determining affected facility status, provided you comply with the requirements in paragraphs (e)(5)(i) through (iv) of this section.

(i) You meet the cover requirements specified in § 60.5411a(b).

(ii) You meet the closed vent system requirements specified in § 60.5411a(c) and (d).

(iii) You must maintain records that document compliance with paragraphs (e)(5)(i) and (ii) of this section.

(iv) In the event of removal of apparatus that recovers and routes vapor to a process, or operation that is inconsistent with the conditions specified in paragraphs (e)(5)(i) and (ii) of this section, you must determine the storage vessel's potential for VOC emissions according to this section within 30 days of such removal or operation.

(6) The requirements of this paragraph (e)(6) apply to each storage vessel affected facility immediately upon startup, startup of production, or return to service. A storage vessel affected facility that is reconnected to the original source of liquids is a storage vessel affected facility subject to the same requirements that applied before being removed from service. Any storage vessel that is used to replace any storage vessel affected facility is subject to the same requirements that applied to the storage vessel affected facility being replaced.

(7) A storage vessel with a capacity greater than 100,000 gallons used to recycle water that has been passed through two stage separation is not a storage vessel affected facility.

(f) The group of all equipment within a process unit at an onshore natural gas processing plant is an affected facility.

(1) Addition or replacement of equipment for the purpose of process improvement that is accomplished without a capital expenditure shall not by itself be considered a modification under this subpart.

(2) Equipment associated with a compressor station, dehydration unit, sweetening unit, underground storage vessel, field gas gathering system, or liquefied natural gas unit is covered by §§ 60.5400a, 60.5401a, 60.5402a, 60.5421a, and 60.5422a if it is located at an onshore natural gas processing plant. Equipment not located at the onshore natural gas processing plant site is exempt from the provisions of §§ 60.5400a, 60.5401a, 60.5402a, 60.5421a, and 60.5422a.

(3) The equipment within a process unit of an affected facility located at onshore natural gas processing plants and described in paragraph (f) of this section are exempt from this subpart if they are subject to and controlled according to subparts VVa, GGG, or GGGa of this part.

(g) Sweetening units located at onshore natural gas processing plants that commenced construction, modification, or reconstruction after September 18, 2015, and on or before November 16, 2020, and sweetening units that commence construction, modification, or reconstruction after November 16, 2020.

- (1) Each sweetening unit that processes natural gas produced from either onshore or offshore wells is an affected facility;
and
 - (2) Each sweetening unit that processes natural gas followed by a sulfur recovery unit is an affected facility.
 - (3) Facilities that have a design capacity less than 2 long tons per day (LT/D) of hydrogen sulfide (H₂S) in the acid gas (expressed as sulfur) are required to comply with recordkeeping and reporting requirements specified in § 60.5423a(c) but are not required to comply with §§ 60.5405a through 60.5407a and §§ 60.5410a(g) and 60.5415a(g).
 - (4) Sweetening facilities producing acid gas that is completely re-injected into oil-or-gas-bearing geologic strata or that is otherwise not released to the atmosphere are not subject to §§ 60.5405a through 60.5407a, 60.5410a(g), 60.5415a(g), and 60.5423a.
- (h) Each pneumatic pump affected facility:
- (1) For natural gas processing plants, each pneumatic pump affected facility, which is a single natural gas-driven diaphragm pump.
 - (2) For well sites, each pneumatic pump affected facility, which is a single natural gas-driven diaphragm pump. A single natural gas-driven diaphragm pump that is in operation less than 90 days per calendar year is not an affected facility under this subpart provided the owner/operator keeps records of the days of operation each calendar year and submits such records to the EPA Administrator (or delegated enforcement authority) upon request. For the purposes of this section, any period of operation during a calendar day counts toward the 90 calendar day threshold.
- (i) Except as provided in § 60.5365a(i)(2), the collection of fugitive emissions components at a well site, as defined in § 60.5430a, is an affected facility.
- (1) [Reserved]
 - (2) A well site that only contains one or more wellheads is not an affected facility under this subpart. The affected facility status of a separate tank battery surface site has no effect on the affected facility status of a well site that only contains one or more wellheads.
 - (3) For purposes of § 60.5397a, a “modification” to a well site occurs when:
 - (i) A new well is drilled at an existing well site;
 - (ii) A well at an existing well site is hydraulically fractured; or

(iii) A well at an existing well site is hydraulically refractured.

(4) For purposes of § 60.5397a, a “modification” to an existing source separate tank battery surface site occurs when:

(i) Any of the actions in paragraphs (i)(3)(i) through (iii) of this section occurs at an existing source separate tank battery surface site;

(ii) A well sending production to an existing source separate tank battery site is modified, as defined in paragraphs (i)(3)(i) through (iii) of this section; or

(iii) A well site subject to the requirements in § 60.5397a removes all major production and processing equipment, as defined in § 60.5430a, such that it becomes a wellhead only well site and sends production to an existing source separate tank battery surface site.

(j) The collection of fugitive emissions components at a compressor station, as defined in § 60.5430a, is an affected facility. For purposes of § 60.5397a, a “modification” to a compressor station occurs when:

(1) An additional compressor is installed at a compressor station; or

(2) One or more compressors at a compressor station is replaced by one or more compressors of greater total horsepower than the compressor(s) being replaced. When one or more compressors is replaced by one or more compressors of an equal or smaller total horsepower than the compressor(s) being replaced, installation of the replacement compressor(s) does not trigger a modification of the compressor station for purposes of § 60.5397a.

Credits

[85 FR 57070, Sept. 14, 2020; 85 FR 57438, Sept. 15, 2020; 89 FR 17037, March 8, 2024]

SOURCE: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988; 57 FR 32338, July 21, 1992; 58 FR 40591, July 29, 1993; 60 FR 65384, Dec. 19, 1995; 62 FR 8328, Feb. 24, 1997; 62 FR 48379, Sept. 15, 1997; 64 FR 7463, Feb. 12, 1999; 65 FR 78275, Dec. 14, 2000; 72 FR 59204, Oct. 19, 2007; 81 FR 35898, June 3, 2016; 87 FR 18706, March 31, 2022; 87 FR 32090, May 27, 2022; 89 FR 17036, March 8, 2024, unless otherwise noted.

AUTHORITY: 42 U.S.C. 7401 et seq.

Current through November 27, 2024, 89 FR 94594. Some sections may be more current. See credits for details.

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 60. Standards of Performance for New Stationary Sources (Refs & Annos)
Subpart Oooo. Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification, or Reconstruction Commenced After August 23, 2011, and on or Before September 18, 2015 (Refs & Annos)

40 C.F.R. § 60.5430

§ 60.5430 What definitions apply to this subpart?

Effective: May 7, 2024

[Currentness](#)

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in subpart A or subpart VVa of part 60; and the following terms shall have the specific meanings given them.

Acid gas means a gas stream of hydrogen sulfide (H₂S) and carbon dioxide (CO₂) that has been separated from sour natural gas by a sweetening unit.

Alaskan North Slope means the approximately 69,000 square-mile area extending from the Brooks Range to the Arctic Ocean.

API Gravity means the weight per unit volume of hydrocarbon liquids as measured by a system recommended by the American Petroleum Institute (API) and is expressed in degrees.

Bleed rate means the rate in standard cubic feet per hour at which natural gas is continuously vented (bleeds) from a pneumatic controller.

Capital expenditure means, in addition to the definition in [40 CFR 60.2](#), an expenditure for a physical or operational change to an existing facility that:

(1) Exceeds P, the product of the facility's replacement cost, R, and an adjusted annual asset guideline repair allowance, A, as reflected by the following equation: $P = R \times A$, where

(i) The adjusted annual asset guideline repair allowance, A, is the product of the percent of the replacement cost, Y, and the applicable basic annual asset guideline repair allowance, B, divided by 100 as reflected by the following equation:

$$A = Y \times (B / 100);$$

(ii) The percent Y is determined from the following equation: $Y = 1.0 - 0.575 \log X$, where X is 2011 minus the year of construction; and

(iii) The applicable basic annual asset guideline repair allowance, B, is 4.5.

(2) [Reserved]

Centrifugal compressor means any machine for raising the pressure of a natural gas by drawing in low pressure natural gas and discharging significantly higher pressure natural gas by means of mechanical rotating vanes or impellers. Screw, sliding vane, and liquid ring compressors are not centrifugal compressors for the purposes of this subpart.

Certifying official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The Administrator is notified of such delegation of authority prior to the exercise of that authority. The Administrator reserves the right to evaluate such delegation;

(2) For a partnership (including but not limited to general partnerships, limited partnerships, and limited liability partnerships) or sole proprietorship: A general partner or the proprietor, respectively. If a general partner is a corporation, the provisions of paragraph (1) of this definition apply;

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(4) For affected facilities:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under title IV of the Clean Air Act or the regulations promulgated thereunder are concerned; or

(ii) The designated representative for any other purposes under part 60.

City gate means the delivery point at which natural gas is transferred from a transmission pipeline to the local gas utility.

Collection system means any infrastructure that conveys gas or liquids from the well site to another location for treatment, storage, processing, recycling, disposal or other handling.

Completion combustion device means any ignition device, installed horizontally or vertically, used in exploration and production operations to combust otherwise vented emissions from completions.

Compressor station means any permanent combination of one or more compressors that move natural gas at increased pressure from fields, in transmission pipelines, or into storage.

Condensate means hydrocarbon liquid separated from natural gas that condenses due to changes in the temperature, pressure, or both, and remains liquid at standard conditions.

Continuous bleed means a continuous flow of pneumatic supply natural gas to the process control device (e.g., level control, temperature control, pressure control) where the supply gas pressure is modulated by the process condition, and then flows to the valve controller where the signal is compared with the process set-point to adjust gas pressure in the valve actuator.

Custody transfer means the transfer of natural gas after processing and/or treatment in the producing operations, or from storage vessels or automatic transfer facilities or other such equipment, including product loading racks, to pipelines or any other forms of transportation.

Dehydrator means a device in which an absorbent directly contacts a natural gas stream and absorbs water in a contact tower or absorption column (absorber).

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

- (1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limit, operating limit, or work practice standard;
- (2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or
- (3) Fails to meet any emission limit, operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Delineation well means a well drilled in order to determine the boundary of a field or producing reservoir.

Equipment, as used in the standards and requirements in this subpart relative to the equipment leaks of VOC from onshore natural gas processing plants, means each pump, pressure relief device, open-ended valve or line, valve, and flange or other connector that is in VOC service or in wet gas service, and any device or system required by those same standards and requirements in this subpart.

Field gas means feedstock gas entering the natural gas processing plant.

Field gas gathering means the system used transport field gas from a field to the main pipeline in the area.

Flare means a thermal oxidation system using an open (without enclosure) flame. Completion combustion devices as defined in this section are not considered flares.

Flow line means a pipeline used to transport oil and/or gas to a processing facility, a mainline pipeline, re-injection, or routed to a process or other useful purpose.

Flowback means the process of allowing fluids and entrained solids to flow from a natural gas well following a treatment, either in preparation for a subsequent phase of treatment or in preparation for cleanup and returning the well to production. The term flowback also means the fluids and entrained solids that emerge from a natural gas well during the flowback process. The flowback period begins when material introduced into the well during the treatment returns to the surface following hydraulic fracturing or refracturing. The flowback period ends when either the well is shut in and permanently disconnected from the flowback equipment or at the startup of production. The flowback period includes the initial flowback stage and the separation flowback stage.

Gas processing plant process unit means equipment assembled for the extraction of natural gas liquids from field gas, the fractionation of the liquids into natural gas products, or other operations associated with the processing of natural gas products.

A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the products.

Gas well or natural gas well means an onshore well drilled principally for production of natural gas.

Group 1 storage vessel means a storage vessel, as defined in this section, for which construction, modification or reconstruction has commenced after August 23, 2011, and on or before April 12, 2013.

Group 2 storage vessel means a storage vessel, as defined in this section, for which construction, modification or reconstruction has commenced after April 12, 2013, and on or before September 18, 2015.

Hydraulic fracturing or refracturing means the process of directing pressurized fluids containing any combination of water, proppant, and any added chemicals to penetrate tight formations, such as shale or coal formations, that subsequently require high rate, extended flowback to expel fracture fluids and solids during completions.

Hydraulic refracturing means conducting a subsequent hydraulic fracturing operation at a well that has previously undergone a hydraulic fracturing operation.

In light liquid service means that the piece of equipment contains a liquid that meets the conditions specified in § 60.485a(e) or § 60.5401(g)(2) of this part.

In wet gas service means that a compressor or piece of equipment contains or contacts the field gas before the extraction step at a gas processing plant process unit.

Initial flowback stage means the period during a well completion operation which begins at the onset of flowback and ends at the separation flowback stage.

Intermediate hydrocarbon liquid means any naturally occurring, unrefined petroleum liquid.

Intermittent/snap-action pneumatic controller means a pneumatic controller that vents non-continuously.

Liquefied natural gas unit means a unit used to cool natural gas to the point at which it is condensed into a liquid which is colorless, odorless, non-corrosive and non-toxic.

Low pressure gas well means a well with reservoir pressure and vertical well depth such that 0.445 times the reservoir pressure (in psia) minus 0.038 times the true vertical well depth (in feet) minus 67.578 psia is less than the flow line pressure at the sales meter.

Maximum average daily throughput means the earliest calculation of daily average throughput during the 30-day PTE evaluation period employing generally accepted methods.

Natural gas-driven pneumatic controller means a pneumatic controller powered by pressurized natural gas.

Natural gas liquids means the hydrocarbons, such as ethane, propane, butane, and pentane that are extracted from field gas.

Natural gas processing plant (gas plant) means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both. A Joule-Thompson valve, a dew point depression valve, or an isolated or standalone Joule-Thompson skid is not a natural gas processing plant.

Natural gas transmission means the pipelines used for the long distance transport of natural gas (excluding processing). Specific equipment used in natural gas transmission includes the land, mains, valves, meters, boosters, regulators, storage vessels, dehydrators, compressors, and their driving units and appurtenances, and equipment used for transporting gas from a production plant, delivery point of purchased gas, gathering system, storage area, or other wholesale source of gas to one or more distribution area(s).

Nonfractionating plant means any gas plant that does not fractionate mixed natural gas liquids into natural gas products.

Non-natural gas-driven pneumatic controller means an instrument that is actuated using other sources of power than pressurized natural gas; examples include solar, electric, and instrument air.

Onshore means all facilities except those that are located in the territorial seas or on the outer continental shelf.

Pneumatic controller means an automated instrument used for maintaining a process condition such as liquid level, pressure, delta-pressure and temperature.

Pressure vessel means a storage vessel that is used to store liquids or gases and is designed not to vent to the atmosphere as a result of compression of the vapor headspace in the pressure vessel during filling of the pressure vessel to its design capacity.

Process unit means components assembled for the extraction of natural gas liquids from field gas, the fractionation of the liquids into natural gas products, or other operations associated with the processing of natural gas products. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the products.

Produced water means water that is extracted from the earth from an oil or natural gas production well, or that is separated from crude oil, condensate, or natural gas after extraction.

Reciprocating compressor means a piece of equipment that increases the pressure of a process gas by positive displacement, employing linear movement of the driveshaft.

Reciprocating compressor rod packing means a series of flexible rings in machined metal cups that fit around the reciprocating compressor piston rod to create a seal limiting the amount of compressed natural gas that escapes to the atmosphere.

Recovered gas means gas recovered through the separation process during flowback.

Recovered liquids means any crude oil, condensate or produced water recovered through the separation process during flowback.

Reduced emissions completion means a well completion following fracturing or refracturing where gas flowback that is otherwise vented is captured, cleaned, and routed to the flow line or collection system, re-injected into the well or another well, used as an on-site fuel source, or used for other useful purpose that a purchased fuel or raw material would serve, with no direct release to the atmosphere.

Reduced sulfur compounds means H₂S, carbonyl sulfide (COS), and carbon disulfide (CS₂).

Removed from service means that a storage vessel affected facility has been physically isolated and disconnected from the process for a purpose other than maintenance in accordance with § 60.5395(f)(1).

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: A general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(4) For affected facilities:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under title IV of the Clean Air Act or the regulations promulgated thereunder are concerned; or

(ii) The designated representative for any other purposes under part 60.

Returned to service means that a Group 1 or Group 2 storage vessel affected facility that was removed from service has been:

(1) Reconnected to the original source of liquids or has been used to replace any storage vessel affected facility; or

(2) Installed in any location covered by this subpart and introduced with crude oil, condensate, intermediate hydrocarbon liquids or produced water.

Routed to a process or route to a process means the emissions are conveyed via a closed vent system to any enclosed portion of a process where the emissions are predominantly recycled and/or consumed in the same manner as a material that fulfills the same function in the process and/or transformed by chemical reaction into materials that are not regulated materials and/or incorporated into a product; and/or recovered.

Salable quality gas means natural gas that meets the flow line or collection system operator specifications, regardless of whether such gas is sold.

Separation flowback stage means the period during a well completion operation when it is technically feasible for a separator to function. The separation flowback stage ends either at the startup of production, or when the well is shut in and permanently disconnected from the flowback equipment.

Startup of production means the beginning of initial flow following the end of flowback when there is continuous recovery of salable quality gas and separation and recovery of any crude oil, condensate or produced water.

Storage vessel means a tank or other vessel that contains an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water, and that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support. A well completion vessel that receives recovered liquids from a well after startup of production following flowback for a period which exceeds 60 days is considered a storage vessel under this subpart. A tank

or other vessel shall not be considered a storage vessel if it has been removed from service in accordance with the requirements of § 60.5395(f) until such time as such tank or other vessel has been returned to service. For the purposes of this subpart, the following are not considered storage vessels:

(1) Vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges or ships), and are intended to be located at a site for less than 180 consecutive days. If you do not keep or are not able to produce records, as required by § 60.5420(c)(5)(iv), showing that the vessel has been located at a site for less than 180 consecutive days, the vessel described herein is considered to be a storage vessel from the date the original vessel was first located at the site. This exclusion does not apply to a well completion vessel as described above.

(2) Process vessels such as surge control vessels, bottoms receivers or knockout vessels.

(3) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere.

Sulfur production rate means the rate of liquid sulfur accumulation from the sulfur recovery unit.

Sulfur recovery unit means a process device that recovers element sulfur from acid gas.

Surface site means any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed.

Sweetening unit means a process device that removes hydrogen sulfide and/or carbon dioxide from the sour natural gas stream.

Total Reduced Sulfur (TRS) means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide as measured by Method 16 of appendix A to part 60 of this chapter.

Total SO₂ equivalents means the sum of volumetric or mass concentrations of the sulfur compounds obtained by adding the quantity existing as SO₂ to the quantity of SO₂ that would be obtained if all reduced sulfur compounds were converted to SO₂ (ppmv or kg/dscm (lb/dscf)).

Underground storage vessel means a storage vessel stored below ground.

Well means an oil or gas well, a hole drilled for the purpose of producing oil or gas, or a well into which fluids are injected.

Well completion means the process that allows for the flowback of petroleum or natural gas from newly drilled wells to expel drilling and reservoir fluids and tests the reservoir flow characteristics, which may vent produced hydrocarbons to the atmosphere via an open pit or tank.

Well completion operation means any well completion with hydraulic fracturing or refracturing occurring at a gas well affected facility.

Well completion vessel means a vessel that contains flowback during a well completion operation following hydraulic fracturing or refracturing. A well completion vessel may be a lined earthen pit, a tank or other vessel that is skid-mounted or portable. A well completion vessel that receives recovered liquids from a well after startup of production following flowback for a period which exceeds 60 days is considered a storage vessel under this subpart.

Well site means one or more areas that are directly disturbed during the drilling and subsequent operation of, or affected by, production facilities directly associated with any oil well, gas well, or injection well and its associated well pad.

Wellhead means the piping, casing, tubing and connected valves protruding above the earth's surface for an oil and/or natural gas well. The wellhead ends where the flow line connects to a wellhead valve. The wellhead does not include other equipment at the well site except for any conveyance through which gas is vented to the atmosphere.

Wildcat well means a well outside known fields or the first well drilled in an oil or gas field where no other oil and gas production exists.

Credits

[78 FR 58447, Sept. 23, 2013; 79 FR 79040, Dec. 31, 2014; 80 FR 48268, Aug. 12, 2015; 81 FR 35898, June 3, 2016; 85 FR 57069, Sept. 14, 2020; 89 FR 17036, March 8, 2024]

SOURCE: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988; 57 FR 32338, July 21, 1992; 58 FR 40591, July 29, 1993; 60 FR 65384, Dec. 19, 1995; 62 FR 8328, Feb. 24, 1997; 62 FR 48379, Sept. 15, 1997; 64 FR 7463, Feb. 12, 1999; 65 FR 78275, Dec. 14, 2000; 72 FR 59204, Oct. 19, 2007; 77 FR 49542, Aug. 16, 2012; 81 FR 35896, June 3, 2016; 85 FR 57069, Sept. 14, 2020; 87 FR 18706, March 31, 2022; 87 FR 32090, May 27, 2022, unless otherwise noted.

AUTHORITY: 42 U.S.C. 7401 et seq.

Current through November 27, 2024, 89 FR 94594. Some sections may be more current. See credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.