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RE: 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, 87 Fed. Reg. 74,702–74,847 (December 6, 2022)

Ms. Hambrick:

The U.S. Chamber of Commerce (the "Chamber") appreciates the opportunity to comment on the U.S. Environmental Protection Agency's ("EPA") supplemental notice of proposed rulemaking entitled "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review," dated December 6, 2022 (the "Methane Proposal" or "Proposal"). This Proposal supplements EPA's previously proposed "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review," dated November 15, 2021 ("November 2021 Notice" or "Notice").[1] We commented on the Notice on January 31, 2022.[2] In our comments, we suggested that EPA supplement that Notice, and we commend EPA for doing so now.

The Chamber supports the smart, balanced 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 ("GHG") emissions. As with our comments on EPA's November 2021 Notice, our comments here

[1] *See* 86 Fed. Reg. 63,110 (Nov. 15, 2021).

[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) (Comment ID EPA-HQ-OAR-2021-0317-0921) (Jan. 31, 2022), https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0317-0921 [hereinafter Chamber January 2022 Comment Letter].

are intended to help EPA develop an effective, durable final rule. The Chamber represents not only members in the oil and natural gas sector itself, who would be directly subject to the Methane Proposal, but also innumerable companies in the wider U.S. economy that depend upon reliable access to oil- and natural-gas-derived products. The Chamber therefore has a substantial interest in ensuring a regulatory environment that promotes, rather than impedes, economic growth across industries as well as America's collective energy security. One of the Chamber's goals is to unify policymakers, regulators, business leaders, and the American public behind a commonsense energy strategy and regulatory framework that reduces GHG emissions and keeps America secure and prosperous.

Affordable, domestically produced natural gas has been one of the primary driving forces behind significant reductions in carbon emissions achieved over the past decade, most notably from the power generation sector. America's oil and natural gas industry also provides reliable and affordable energy to power our economy and to support our allies, and it does so with one of the lowest emissions intensities in the world. Many members of the industry have taken significant steps to reduce methane emissions and stand ready to make the capital and personnel-intensive investments that further regulations would require. But if they are to do so, the business community—which includes both oil and natural gas operators and the service providers who support them—needs regulatory certainty. The oil and natural gas industry has faced significant regulatory uncertainty in this area over the past decade, which has hindered investment and innovation. EPA can reduce methane emissions while simultaneously supporting domestic energy production by ensuring that any final methane regulations are clear, pragmatic, legally durable, and easily implemented. EPA's regulations should encourage innovation and the improvement of technologies to measure and reduce emissions while ensuring our energy security through continued development of our natural resources.

By creating practical regulations that recognize the realities of the environments in which these operations take place, and that comply with statutory requirements, EPA can help to encourage environmentally sound and economically viable domestic production. Given the important role that Congress intended the states and cooperative federalism to play in implementing stationary source air programs such as the one EPA is proposing here, EPA should ensure that any final New Source Performance Standards ("NSPS") and emission guidelines ("EGs") are designed to ensure a smooth partnership with the states where the majority of oil and natural gas production occurs.

The Chamber offers the following comments to help refine EPA's Methane Proposal to create durable, long-term regulatory certainty for the upstream and midstream segments of the oil and natural gas sector, while maintaining a proper balance with key economic, legal, and policy considerations. As discussed more fully below, EPA's proposed regulations should facilitate additional progress in cost-

effectively reducing methane, in accordance with law, while accounting for other important policy considerations described in this letter. We highlight critical areas where EPA should make further revisions before issuing any final rule in order to avoid violating the Clean Air Act ("CAA") and other legal requirements, and raising unnecessary constitutional questions.

In summary, the Chamber believes the Methane Proposal:

- Must consider the importance of maintaining America's energy security and continuing the development of our natural resources to maintain comparatively low energy prices, as well as recognize the importance of oil and natural gas products in the ongoing energy transition.

- Should avoid unnecessarily complex and burdensome layering of multiple New Source Performance Standards ("NSPS").

- Should provide states with appropriate flexibility to meet their obligations under CAA section 111(d), and provide an expedient approval process to avoid unnecessary delay and regulatory uncertainty in implementing the Emissions Guidelines ("EGs").

- Should set a standard for "best system of emission reduction" ("BSER") that allows for innovation and not limit compliance to certain technologies.

- Should follow the appropriate procedures for developing NSPS regulations in order to provide certainty for the regulated community and ensure a durable regulatory framework going forward. Failure to do so would risk delays in implementation and, in turn, create lingering regulatory uncertainty.

- In addition, EPA should:

    - Amend the applicability date for its proposed subpart OOOOb ("Quad Ob") NSPS to reflect the inclusion of regulatory text sufficient to trigger applicability in this Methane Proposal, not the prior November 2021 Notice, which lacked regulatory text and therefore did not provide fair notice to owners and operators.

    - Make the statutorily required endangerment and significant contribution findings, including before expanding the scope of the Crude Oil and Natural Gas source category to include dry seal centrifugal compressors.

    - Reconsider its "Super-Emitter Response Program," which exceeds the agency's CAA authority and raises numerous practical concerns.

- Amend its definition of "legally and practically enforceable" so that proven, actively enforced state emissions standards and programs are not unduly discarded.

- Prioritize making an "Inflation Reduction Act equivalence determination" and not wait until state implementation plans are submitted.

- Withdraw the External Review Draft of Report on the Social Cost of Greenhouse Gases from this rulemaking and defer to the IWG's process for updating the SC-GHG values.[3]

In addition, the Chamber has submitted and incorporates by reference its previous comment letter, dated January 31, 2021.[4]

I. Domestic oil and natural gas production is integral to energy security, the economy, and the environment, and EPA's Methane Proposal should avoid unnecessary regulatory burdens and encourage innovation and the improvement of technologies to measure and reduce emissions.

A. The domestic oil and natural gas industry is a key driver of economic growth on both a national and local scale.

The United States possesses enormous oil and natural gas deposits and has seen a marked revival in production due to advanced extraction techniques, leading to the nation becoming one of the world's largest producers of oil, natural gas, and related products. The Department of Energy has characterized these trends as a "renaissance in oil and gas production in the United States over the past decade."[5] In 2019, the United States produced record levels of crude oil (12.2 million barrels per day) and natural gas (40.7 trillion cubic feet), increases of 11.3 percent and 10.6 percent from 2018 levels,

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[3] Here, the Chamber incorporates by reference its separate set of comments in this docket regarding EPA's use of the Interagency Working Group's ("IWG") SC-GHG estimates and the agency's release of the "EPA External Review Draft of Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances." *See* U.S. Chamber of Commerce, 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, 87 Fed. Reg. 74,702 (December 6, 2022): Comments on Use of Social Cost of Greenhouse Gases Estimates (Docket ID No. EPA-HQ-OAR-2021-0317) (February 13, 2023) [hereinafter Chamber SC-GHG Comments].

[4] *See* Chamber January 2022 Comment Letter, https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0317-0921.

[5] *See* U.S. Dep't of Energy ("DOE"), *Valuation of Energy Security for the United States* 12 (2017), https://www.energy.gov/sites/prod/files/2017/01/f34/Valuation%20of%20Energy%20Security%20for%20the%20United%20States%20%28Full%20Report%29_1.pdf.

respectively.[6] The United States, as a result, enjoyed its best energy security since 1970[7] and became a net energy exporter for the first time since 1952.[8] These achievements are due in no small part to America's shale revolution and advances in hydraulic fracturing technology. [9]

Beyond production statistics and industry trends, America's oil and natural gas industry is integral to the broader American economy. The production, transport, and refining of oil, natural gas, and related products creates well-paying jobs in a number of areas where such opportunities may otherwise be in short supply. The U.S. oil and natural gas industry's total employment impact is estimated at 11.3 million domestic jobs, or 5.6 percent of total U.S. employment.[10] And each direct job in the oil and natural gas industry supports an additional 3.5 jobs elsewhere in the U.S. economy.[11] Moreover, these jobs are spread throughout the country, as 31 states boast at least 100,000 jobs directly or indirectly supported by the oil and natural gas industry.[12]

At the consumer level, energy costs represent a sizable portion of American consumer's budgets, whether it be the prices consumers pay at the pump, the amounts spent on power or heating bills, or the price tags on countless consumer goods.[13] Oil and natural gas are critical to allowing Americans to affordably power the vehicles that

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[6] *See* Glob. Energy Inst. ("GEI"), U.S. Chamber of Commerce, *Index of U.S. Energy Security Risk* 5 (2020), https://www.globalenergyinstitute.org/sites/default/files/2020-10/024036%20Global%20Energy%20Institute%20US %20Index_Web.pdf.

[7] *Id.* (Table 1). In fact, after the United States received a record-high risk score of 100.9 in 2011, its score fell in seven of the subsequent eight years to a record low of 70.1 in 2019—a 5.5 percent decrease from 2018. *Id.* at 4.

[8] *See* U.S. Energy Info. Admin. ("EIA"), *U.S. Energy Facts Explained*, https://www.eia.gov/energyexplained/us-energy-facts/imports-and-exports.php (last updated June 10, 2022).

[9] *See* GEI, *Index of U.S. Energy Security Risk*, *supra* note 6, at 4 ("The application of hydraulic fracturing, horizontal drilling, and advanced seismic imaging has unlocked a tremendous oil and gas resource, turning energy scarcity into abundance."); *see also* DOE, *Valuation of Energy Security*, *supra* note 5, at 12 (attributing the United States' growth in oil and natural gas production to "technical innovation and entrepreneurial initiative").

[10] *See* PWC & Am. Petroleum Inst., *Impacts of the Oil and Natural Gas Industry on the U.S. Economy in 2019* E-2 (2021), https://www.api.org/-/media/files/policy/american-energy/pwc/api-pwc-economic-impact-report.pdf.

[11] *Id.* at E-2.

[12] *Id.*

[13] *See* DOE, *Valuation of Energy Security*, *supra* note 5, at 31–34; Josh Mitchell, *Soaring Energy Prices Raise Concerns About U.S. Inflation, Economy*, Wall St. J. (Oct. 10, 2021), https://www.wsj.com/articles/soaring-energy-prices-raise-concerns-about-u-s-inflation-economy-11633870800?st= rx3j3jxhf6ivnp7&reflink=desktopwebshare_permalink.

deliver their products or allow them to commute to work, and represent the vast majority of energy consumed for these transportation purposes.[14] In fact, transportation costs are the second-largest expense for most households' annual budgets, often accounting for as much as 20 percent to 25 percent of annual income.[15] Further, half of all American households rely on natural gas for heating their homes and water, cooking, and drying clothes, making them especially sensitive to fluctuations in the price of natural gas.[16] Because much of this energy-related consumer spending is essential, "[c]onsumers can't easily cut [energy] consumption on short notice, as they can with discretionary purchases, so higher prices act as a tax, draining the money they have available to spend on other goods and services."[17] When consumers elect to instead cut discretionary spending, the reduction carries negative consequences for the broader economy and helps explain why high energy prices often precede recessions.[18]

Moreover, natural gas has become essential to the electric generation and industrial sectors. In fact, since 2005, the annual consumption of natural gas has grown by nearly 41 percent, or 9 trillion cubic feet, with the electric generation (up 60 percent) and industrial (up 28 percent) sectors comprising nearly 90 percent of the increase in annual consumption.[19] Natural gas has displaced other power generation sources to become the primary fuel for electric power generation over the past 10 years.[20] Further, manufacturers use oil and natural gas as a feedstock or as a fuel for production. A stable supply of oil and natural gas is critical to ensure adequate production of

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[14] *See* U.S. Dep't of Energy ("DOE"), *Valuation of Energy Security for the United States* 32–33 (2017), https://www.energy.gov/sites/prod/files/2017/01/f34/Valuation%20of%20Energy%20Security%20for%20the%20United%20States%20%28Full%20Report%29_1.pdf.

[15] *Id.* at 33.

[16] *See* EIA, *Natural Gas Explained: Use of Natural Gas*, https://www.eia.gov/energyexplained/natural-gas/use-of-natural-gas.php (last updated Nov. 16, 2022); *see also* DOE, *Valuation of Energy Security*, *supra* note 5, at 34.

[17] *See* Mitchell, *supra* note 16; *see also* DOE, *Valuation of Energy Security*, *supra* note 5, at 32.

[18] *See* Mitchell, *supra* note 16; *see also* DOE, *Valuation of Energy Security*, *supra* note 5, at 32 ("As a result of those higher [transportation fuel] prices, households and businesses are able to spend less on other goods and services and invest less. Those decisions create indirect costs on the economy, with effects that can last for several quarters.").

[19] *See* Center for Climate and Energy Solutions ("C2ES"), *Climate Solutions: Technology Solutions: Natural Gas*, https://www.c2es.org/content/natural-gas/ (last visited Jan. 11, 2023).

[20] *Id.*

petrochemicals, medical devices, plastics, solvents, fertilizers, and many other products that American consumers use on a regular basis.[21]

In short, the United States' oil and natural gas industry is intertwined with almost every aspect of the broader United States economy, and policies affecting the industry can have long-ranging positive and negative repercussions.

B. Domestic oil and natural gas production allows America to quickly respond to disruptions in global energy markets, thereby safeguarding our energy security.

Energy security plays a key role in the United States' economic success by ensuring the availability of affordable, reliable, and diversified sources of energy capable of fueling our national economy.[22] In an increasingly global energy market, the United States has grown more vulnerable to foreign energy disruption—including not just political disruptions, but also cybersecurity threats, extreme weather events, and other sources of risk to affordability, reliability, and/or availability.[23] The recent surge in domestic production, however, has helped safeguard America's energy security from such foreign disruptions, while simultaneously helping the entire global energy market weather such volatilities. The Department of Energy has found that increased production of oil and natural gas has "improved domestic, and thus global, energy security in a variety of ways" and has repeatedly prevented spikes in energy prices that could threaten both the U.S. and global economy.[24] We are therefore fortunate to presently have a stable supply of domestic oil and natural gas production, but this valuable supply is vulnerable to dissipation if overly burdensome regulatory regimes, or other factors, impede the development of available resources.

In fact, the impact that energy shortages and reliance on foreign energy sources can have on economic stability—and the counterbalancing benefits of strong domestic production—has been highlighted by recent events in Europe. In contrast to the United States, which has a stable domestic supply of natural gas, Europe imports much of its

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[21] *See* IEA, *The Future of Petrochemicals: Towards More Sustainable Plastics and Fertilisers* 11 (2018), https://iea.blob.core.windows.net/assets/bee4ef3a-8876-4566-98cf-7a130c013805/The_Future_of_Petrochemicals.pdf. (Petrochemicals "are set to account for more than a third of the growth in oil demand to 2030, and nearly half to 2050, ahead of trucks, aviation and shipping.").

[22] *See* Int'l Energy Agency ("IEA"), *Energy Security: Reliable, Affordable Access to All Fuels and Energy Sources*, https://www.iea.org/topics/energy-security (last visited Jan. 10, 2023).

[23] *See* U.S. Dep't of Energy ("DOE"), *Valuation of Energy Security for the United States* 2, 12 (2017), https://www.energy.gov/sites/prod/files/2017/01/f34/Valuation%20of%20Energy%20Security%20for%20the%20United%20States%20%28Full%20Report%29_1.pdf.

[24] *Id.*

natural gas supply—including a significant percentage from Russia—and is therefore far more vulnerable to geopolitical disruptions. The ongoing Ukraine crisis has placed this vulnerability on full display, as reductions in natural gas imports from Russia have spurred an energy crisis across the continent.[25] The European Union, as a result, has had to mitigate shortages with voluntary and mandated energy rationing measures,[26] and consumers have had to grapple with sharp price increases in everyday consumers goods, as the prices for energy inputs skyrocket.[27] Further, many of Europe's industrial sectors have struggled to keep operating.[28] And the downstream consequences of the energy crisis are wide-ranging and will likely be felt for years to come: "The IMF calculated in mid-July that for Hungary, Slovakia, and the Czech Republic a full cut off of natural gas from Russia could drop GDPs by up to 6%. Global economic growth would drop by 2.6% in 2022 and another 2% in 2023. On a human level, some people will not have heating this winter; others will have to choose between warmth and food."[29] It has been the massive influx of U.S.-produced liquified natural gas ("LNG") to European markets that has helped blunt some of the more devastating consequences of the European energy crisis.[30]

By contrast to the European Union, one key factor in the relative stability of U.S. energy prices is supply diversity, which "reduces the likelihood that disruptions to supply or threats to production areas, trade, or distribution routes—whether caused by

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[25] *See* Mark Flanagan et al., Int'l Monetary Fund, *How a Russian Natural Gas Cutoff Could Weigh on Europe's Economies* (July 19, 2022), https://www.imf.org/en/Blogs/Articles/2022/07/19/blog-how-a-russias-natural-gas-cutoff-could-weigh-on-european-economies.

[26] *See* Ewa Krukowska & Lenka Ponikelska, *EU to Propose Mandatory Power-Demand Cut and Levy on Profit*s, Bloomberg (Sept. 12, 2022), https://www.bloomberg.com/news/articles/2022-09-12/eu-energy-intervention-plan-to-focus-on-profit-grab-demand-cuts?utm_source=website&utm_medium=share&utm_campaign=copy.

[27] *See* Lyubov Pronina & Petra Sorge, *From Beer to Tomatoes, Europe's Energy Crisis is Spilling Over*, Yahoo (Sept. 13, 2022), https://news.yahoo.com/beer-tomatoes-europe-energy-crisis-092844730.html?soc_src=social-sh&soc_trk=ma.

[28] See Liz Alderman, *'Crippling' Energy Bills Force Europe's Factories to Go Dark*, N.Y. Times (Sept. 19, 2022), https://www.nytimes.com/2022/09/19/business/europe-energy-crisis-factories.html?smid=url-share; Eleanor Beardsley, *Europe Fears Its Industries Will Jet to the U.S. as Energy Costs Force Plant Closures*, NPR (Nov. 25, 2022), https://www.npr.org/2022/11/25/1138573080/energy-costs-europe-us-companies-close-plants-eu-economy.

[29] *See* Suriya Jayanti, *Europe's Energy Crisis Is Going to Get Worse. The World Will Bear the Cost*, Time (Aug. 30, 2022), https://time.com/6209272/europes-energy-crisis-getting-worse/.

[30] *See* Steven R. Miles, Gabriel Collins & Anna Mikulska, Baker Inst. for Pub. Pol'y, *US Needs LNG to Fight a Two-Front Gas War* (Aug. 18, 2022), https://www.bakerinstitute.org/research/us-needs-lng-fight-two-front-gas-war; *see also* Arvind P. Ravikumar, Morgan Bazilian & Michael E. Webber, *The US Role in Securing the European Union's Near-Term Natural Gas Supply*, 7 Nature Energy 465 (2022), *available at* https://www.nature.com/articles/s41560-022-01054-1.

weather, terrorism, or geopolitics—significantly disrupt U.S. access to physical energy supplies."[31] In addition to global geopolitical events like those noted above, domestic disturbances can hinder the ability to get energy to consumers. Localized weather events could cause certain sources of energy to be taken offline for periods of time, meaning that redundancy in the availability of energy sources is important to ensuring that our economy is able to continue to function smoothly. In addition, heat waves and winter freezes can result in short term and localized spikes in energy demand, as there are regions of our country that are particularly vulnerable to such disruptions because of concentrations of supply or transportation issues. Because oil and natural gas can be strategically stored without relying on battery storage, they are better suited for preparing for an energy disruption than are many renewable energy sources.[32]

Fortunately, the U.S. oil and natural gas industry is already "highly diversified because it is comprised of many privately held businesses that respond to market forces to increase or decrease production of oil and natural gas."[33] In order to support our continued supply diversity, EPA must work to limit the compliance and operational costs associated with the Methane Proposal. Domestic oil and natural gas production also provides source diversity because it occurs over a broad set of geographic regions, so that significant oil and natural gas production is possible from eastern states such as Pennsylvania, to Texas and southwestern states like New Mexico, to Colorado and Wyoming in the west, as well as North Dakota and Alaska. EPA should recognize the importance of maintaining this geographic diversity in its methane regulations, and in particular should work to ensure that any finalized rule allows for a smooth and productive relationship with co-regulators in all of the states where domestic oil and natural gas operations occur. EPA should also recognize that protecting our supply diversity means crafting practical regulations that recognize the wide variety of landscapes and regions where oil and natural gas production occurs. These locations are often remote, with limited infrastructure or onsite personnel. By imposing requirements that assume the regular availability of on-site staff or electricity, EPA risks undermining our energy diversity by reducing the economic viability to continue operating at many of these locations, particularly when they contain existing sources that would be subject for the first time to methane regulations.

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[31] *Id.* at 44.

[32] *See* Robert Walton, *'Batteries Aren't Going to Do It': NERC's Moura Calls for Gas Investment to Maintain Reliability*, Utility Dive (July 21, 2022), https://www.utilitydive.com/news/nerc-2022-reliability-report-gas-solar/627784/.

[33] *See* DOE, *Valuation of Energy Security*, *supra* note 5, at 12.

C. Domestic oil and natural gas has reduced its carbon-intensity and plays an important role in the energy transition.

Even as the United States has attained record levels of oil and natural gas production and, in turn, increased its energy security, the nation has seen a sharp decline in greenhouse gas ("GHG") emissions. Overall carbon dioxide ("CO_2") emissions from fossil fuel combustion have decreased by 1,409.4 million metric tons of CO_2 equivalent ("MMT CO_2e") relative to 2005 levels—a decrease of approximately 24.5 percent.[34] From 2019 to 2020, emissions decreased by 509.7 MMT CO_2e, or approximately 10.5 percent.[35] This is due in large part to the transition to natural gas from more carbon-intensive fossil fuels, such as coal, especially in the electricity generation sector and industrial sectors.[36] Further, the U.S. oil and natural gas production sector has maintained a much lower methane emission intensity than many of its foreign counterparts and is far superior to the intensity of many Organization of Petroleum Exporting Countries ("OPEC") nations. [37] Thus, the domestic oil and natural gas industry already plays an important role in reducing America's overall carbon footprint.

Looking beyond the short-term energy needs, oil and natural gas has a significant role to play in the ongoing energy transition. For example, natural gas is providing, and will continue to provide, the reliable, flexible, baseload power that enables increased deployment of intermittent renewable sources. This will remain a critical factor as renewable generators address challenges to deployment at the scale necessary to meet America's energy needs. Those challenges include, among others, permitting complications;[38] reliable access to markets in rare earth metals and critical minerals that serve as critical components for batteries, electric vehicles, solar panels, and wind

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[34] *See* U.S. Envtl. Prot. Agency ("EPA"), *Inventory of U.S. Greenhouse Gas Emissions and Sinks*, EPA 430-R-22-003, at ES-8 to ES-9, 2-11 to 2-13 (2022), https://www.epa.gov/system/files/documents/2022-04/us-ghg-inventory-2022-main-text.pdf.

[35] *Id.*

[36] *See id.* at ES-8 to ES-9, 2-11 to 2-13; C2ES, *Climate Solutions*, *supra* note 23.

[37] *See* Daniel Byers, GEI, *The Best Solution to Pain at the Pump is Here in America* (Aug. 17, 2021), https://www.globalenergyinstitute.org/best-solution-pain-pump-here-america; *see also* EIA, *Global Methane Tracker 2022: Overview*, https://www.iea.org/reports/global-methane-tracker-2022/overview (last visited Jan. 11, 2023).

[38] *See* Michael Wigmore, Brandon Tuck & Kelly Rondinelli, *Feds May Need Power To Take State Lands For New Grid*, Law360 (Oct. 20, 2021), https://www.law360.com/articles/1432198/feds-may-need-power-to-take-state-lands-for-new-grid; DJ Gribbin, *Environmental Permitting Might Block Biden's Clean Energy Targets*, Brookings Inst. (May 13, 2021), https://www.brookings.edu/blog/the-avenue/2021/05/13/environmental-permitting-might-block-bidens-clean-energy-targets/.

turbines;[39] and the weather dependency of many renewable generation sources that lack reliable battery storage and deployment.[40] Further, petrochemicals and petroleum products are important base materials for renewable infrastructure, such as the layers of copolymers between photovoltaic solar panels[41] and the plastics, resins, and fiberglass in wind turbines.[42] Finally, given the current technological limitations and ongoing deployment of presently scarce grid-scale batteries, generators that combust fossil fuels will be necessary to ensure sufficient "capacity"—the capability of the generators linked to a grid to produce energy on demand—to prevent brownouts or, worse, blackouts. Natural gas-fired power plants are often the "peaking plants," or "peakers," that can run on demand and provide capacity during periods of high demand. In finalizing any rule aimed to reduce methane emissions from the oil and natural gas industry, EPA should therefore recognize the need to balance reductions with pragmatic, durable, and cost-effective regulations that will facilitate necessary domestic energy production. Otherwise, the final rule would be counterproductive to EPA's general aim to reduce domestic GHG emissions and the Administration's goal to support the energy transition.

II. In order to create an effective, durable regulatory regime, EPA should provide practical, flexible standards and emissions guidelines that are not duplicative of other requirements.

A. Any final rule should avoid unnecessarily complex and burdensome "layering" of multiple New Source Performance Standards ("NSPS").

In any final rule, EPA must avoid complex and difficult-to-follow layering of multiple NSPS regimes atop one another, particularly for equipment located at the same

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[39] *See* IEA, *The Role of Critical Minerals in Clean Energy Transitions: World Energy Outlook Special Report* (2022), https://iea.blob.core.windows.net/assets/ffd2a83b-8c30-4e9d-980a-52b6d9a86fdc/TheRoleofCriticalMineralsin CleanEnergyTransitions.pdf; *see also* Daniel J. Cordier, U.S. Geological Survey, *Rare Earths* 2 (Jan. 2022), https://pubs.usgs.gov/periodicals/mcs2022/mcs2022-rare-earths.pdf (noting that China mined more than half of the total rare earths mined worldwide in 2021 and that China has more than one third of the total worldwide reserves of rare earth minerals).

[40] *See* Nat'l Oceanic and Atmospheric Admin. ("NOAA"), *Atmospheric Science for Renewable Energy Challenges*, https://www.esrl.noaa.gov/gsd/renewable/challenges.html (last visited Feb. 6, 2023) (discussing weather forecasting technologies that must be optimized and developed to help forecast renewable energy generation).

[41] *See* Am. Fuel and Petrochemical Mfrs., *Renewable Energies Rely on Petrochemicals from Oil and Natural Gas* (Mar. 4, 2019), https://www.afpm.org/newsroom/blog/renewable-energies-rely-petrochemicals-oil-and-natural-gas.

[42] *See* Leon Mishnaevsky, Jr. et al., *Materials for Wind Turbine Blades: An Overview*, 10 Materials 1285 (2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5706232/pdf/materials-10-01285.pdf; Christopher Mone et al., Nat'l Renewable Energy Lab'y, *2015 Cost of Wind Energy Review* 65 (2017), https://www.nrel.gov/docs/fy17osti/66861.pdf.

site. EPA must ensure that the regulatory regime does not require extensive time and resources to track differing compliance requirements for equipment across these facilities and should aim instead to align any new requirements with those already in place under the existing regime, or continue to clearly state in the final regulatory text that compliance with any NSPS or EGs finalized under this rulemaking will also constitute compliance with the older NSPS standards.

In particular, sources already subject to subpart OOOOa ("Quad Oa") as of EPA's proposed November 15, 2021, applicability date,[43] also become existing sources on that date, and therefore subject to the subpart OOOOc ("Quad Oc") EGs.[44] Adding to this already complicated structure, different pieces of equipment at the same facility would be subject to different versions of the NSPS based on whether the individual component was replaced or modified after a particular trigger date, which would require extensive tracking for operators to determine which regime applies to each piece of equipment if EPA does not make compliance with the new standards equate to compliance with subpart OOOO ("Quad O") and Quad Oa. Yet, EPA's Methane Proposal would not fully abrogate Quad O and Quad Oa, indicating only that "[f]or *most* designated facilities," compliance with an implementing state or federal plan consistent with Quad Oc would constitute compliance "with the older NSPS," presumably meaning Quad O and Quad Oa.[45] This would not provide sufficient regulatory certainty for regulated sources under the Methane Proposal. Regulated entities should not be left to guess whether they will be found in compliance with the proposed layering of requirements—particularly given the potential to incur high administrative and civil penalties on a per-day, per-violation basis in the event of an enforcement case. The resulting web of regulatory requirements would not only be arbitrary and capricious and unduly burdensome but would also raise serious due process concerns.

Given that the CAA empowers state regulators and private citizens to also enforce regulatory requirements, EPA cannot allay these concerns by using its enforcement discretion to avoid imposing such penalties in these areas of ambiguity. EPA should therefore ensure that the requirements included in any final rule expressly state that compliance with Quad Ob or Quad Oc constitutes compliance with the earlier

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[43] Although, as noted below, the Chamber contends that the proper applicability date for any final rule should be the date of this proposed Methane Proposal—December 6, 2022—not that of the November 2021 Notice. *See infra* Section III.A.

[44] *See* 87 Fed. Reg. at 74,707 (Table 1 providing applicability dates for Quad Oa and Quad Oc).

[45] *Id.* at 74,707.

NSPS standards, or simplify the application of these layered provisions to remedy these due process and CAA concerns.[46]

B. To encourage the swift adoption of state programs for existing sources, any final Emissions Guidelines should provide states with appropriate flexibility to meet their obligations under CAA section 111(d) with an expedient approval process to avoid unnecessary delays.

The swift adoption of workable, durable state plans will benefit both the environment and industry by further reducing methane emissions while providing regulatory certainty. Allowing states and Tribes the flexibility to use their existing programs is expected to result in more, and more immediate, reductions in methane emissions for the reasons described below. As EPA knows, existing sources will not become subject to direct methane regulation until state plans take effect. Because existing sources represent a far greater percentage of sources, EPA can ensure a greater and more immediate reduction in methane emissions by simplifying and expediting the process for state plan approvals. The Chamber therefore recommends that EPA expedite to the greatest extent possible the submission and approval processes for states' and Tribes' CAA section 111(d) plans for existing sources under Quad Oc as outlined below.

As the EPA acknowledges, many states have established methane programs already in place that can and should be leveraged to satisfy CAA section 111(d) obligations.[47] To this end, states relying on their existing methane and VOC programs should be authorized to include a different form of standard in their plans so long as they demonstrate the equivalency of such standards to the final EGs in terms of achieving roughly the same overall reduction in methane emissions. The Chamber therefore supports EPA's proposal to interpret CAA section 111 to authorize states to establish standards of performance for their sources that, in the aggregate, would be equivalent to the EG presumptive standards.[48] Such flexibility is, as EPA observes, consistent with the framework of cooperative federalism that CAA section 111(d) establishes, which vests states with substantial discretion.[49]

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[46] *Cf. Sessions v. Dimaya*, 138 S. Ct. 1204, 1212 (2018) ("'The prohibition of vagueness in criminal statutes' . . . is an 'essential' of due process, required by both 'ordinary notions of fair play and the settled rules of law.' The void-for-vagueness doctrine, as we have called it, guarantees that ordinary people have 'fair notice' of the conduct a statute proscribes.... And the doctrine guards against arbitrary or discriminatory law enforcement.").

[47] *See* 87 Fed. Reg. at 74,812.

[48] *Id.*

[49] *Id.*

In addition, EPA should also allow states to establish that their existing programs are equivalent to the EG presumptive standards based on a total program evaluation. Total program evaluations would, as EPA acknowledges, reduce burdens across the board by (1) mitigating the need for states to overhaul or scrap existing methane programs in order to meet the presumptive standards and (2) reducing compliance burdens on owners and operators, who would not need to comply with two different sets of regulations.[50] While the Chamber understands EPA's concerns regarding certain state regimes,[51] EPA should entertain proposals from states that can show that their programs achieve emission reduction benefits equivalent to the EGs. The Chamber believes that using existing state and/or Tribal programs as a starting point will also help to ensure that the approval process for state plans is not unnecessarily delayed by forcing states to make unnecessary revisions to existing programs. This, in turn, will reduce the burden on operators who are already complying with these state regimes and also ensure that there is direct regulation of methane from existing sources on a shorter timeframe.

The Methane Proposal would require states to submit their compliance plans within 18 months after final publication of the EGs.[52] EPA states that this deadline is consistent with the requirement of CAA section 111(d) that EPA promulgate procedures "similar" to CAA section 110[53] and the D.C. Circuit's directive to "engage meaningfully with the different scale" of the section 111(d) and 110 plans, while also considering impacts to public health and welfare.[54] Ahead of this deadline, EPA should work closely with the states and Tribes on an expedient approval process in recognition that this will provide much-needed regulatory certainty for the industry and in recognition that the Inflation Reduction Act ("IRA") allows for exemptions from the newly introduced methane emissions charges under the Methane Emissions Reduction Program ("MERP")—which will soon take effect in 2025—if EPA regulations addressing methane emissions (1) are in effect in all states, and (2) will "result in equivalent or greater emissions reductions as would be achieved" by the November 2021 Notice.[55] Given the substantial potential costs of the methane emissions charges,[56] the Chamber strongly urges EPA to take the MERP exemption deadline into consideration in its approval

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[50] *Id.* at 74,813.

[51] *Id.* at 74,813–14.

[52] *Id.* at 74,831.

[53] *Id.* (quoting 42 U.S.C. § 7411(d))

[54] *Id.* (quoting *Am. Lung Ass'n v. EPA*, 985 F.3d 914, 993 (D.C. Cir. 2021)).

[55] *See* Pub. L. No. 117-169, § 60113, 136 State. 1818, 2075 (2022) (codified at 42 U.S.C. § 7436(f)(6)(A)).

[56] The charge will begin at $900 per metric ton emitted in 2024 and escalate to $1,500 per metric ton in 2026 and each year thereafter. *See* 42 U.S.C. § 7436(e).

process, and encourages EPA to work both internally and with state and tribal regulators to ensure a smooth and efficient process. Doing so will effectuate congressional intent behind the MERP and promote regulatory clarity for the entire sector.

EPA proposes to allow sources to comply with approved state plans within 36 months from the submittal deadline for state plans. Such a time frame is appropriate due to the complexity of these requirements and the new burdens that they would place on many existing sources for the first time.[57] The Chamber notes that these burdens and implementation timeline can be reduced by allowing states to rely on existing state regimes to limit the amount of change in regulatory requirements that both the state regulators and regulated industry will face. As a result, it may be feasible to shorten the implementation timelines if EPA provides sufficient flexibility to the states to use existing regimes.

C. EPA's proposed BSER standard must allow for innovation and should not limit compliance to certain technologies.

The Chamber supports EPA's proposal to allow operators to use a broader range of alternative technologies that goes beyond audio, visual, and olfactory ("AVO") inspections and optical gas imaging ("OGI").[58] Such flexibility will spur continued innovation within the oil and natural gas sector. The Chamber specifically supports EPA's proposal to allow approval of alternative test methods for alternative advanced technologies[59] and recommends that EPA work to create a fast and efficient system that allows for timely approvals that are not overly burdensome to those seeking approval. To this end, while the Chamber supports EPA's proposal that others (not just owners/operators) be allowed to propose alternative test methods, it recommends shortening the EPA's approval deadline for applications from 270 days to 180 days in order to further encourage innovation and prevent regulatory bottlenecks from stalling the use of new technologies.[60]

As to the BSER for associated gas from oil wells, the Chamber supports EPA's conclusion that "beneficial uses of the associated gas"—such as on-site use or reinjection into another well for enhanced oil recovery—should be deemed "equivalent"

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[57] *See* 87 Fed. Reg. at 74,836.

[58] *Id.* at 74,741–44.

[59] *Id.* at 74,745–46.

[60] *Id.* at 74,760–41 (expansion of applicants beyond owners and operators); *id.* at 74,746 (270-day deadline for conditional approval). Alternatively, Chamber recommends allowing for conditional approval of technologies EPA recognizes to be in wide-use during the 270-day approval period.

to the identified BSER of routing the gas to a sales line.[61] For similar reasons, the Chamber recommends that EPA allow a broad range of on-site beneficial purposes, without being prescriptive, in order to provide sufficient regulatory flexibility for future innovation.

D. Any final requirements should reflect the practical realities of oil and natural gas operations.

The Methane Proposal includes a number of provisions, including a proposed schedule for fugitive emissions monitoring and zero-emissions requirements for pneumatic controllers and pumps at well sites, that do not recognize the practical reality that many of these sites are unmanned and located in isolated regions with limited on-site or surrounding infrastructure. In many areas, access to electricity needed to power equipment or natural gas sale lines may simply be unavailable. And even where electricity is available, current electricity generation in many areas, including key oil and natural gas producing basins, will likely not be adequate to accommodate EPA's proposal. Moreover, it is frequently infeasible to connect a site to grid power due to issues beyond the owner or operator's control, such as right-of-way issues. In the short term, while their development and testing is on-going, onsite solar-power systems with battery storage may only be able to provide intermittent power that presents inherent reliability risks. For example, power reliability at large-scale solar applications during the winter months are of considerable concern, when there is less sunlight, more cloud coverage, and increased snow cover. Battery capacity drops drastically at below the freezing point. Finally, many oil and natural gas production areas may not have sufficient qualified individuals to undertake the time-consuming visits to each well site for necessary maintenance of on-site power systems *in addition to* the proposed LDAR requirements, or doing so may be cost-prohibitive.[62]

In order to create practical, durable, and cost-effective rules that will be workable across the wide array of geographies where domestic oil and natural gas operations occur, EPA should revise the proposed requirements to reflect the real-world operations of the industry.[63] Flexibility is essential to smart, effective regulation, and EPA should

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[61] *Id.* at 74,779.

[62] As just one further example, at unmanned sites, there may be challenges to ensuring that the solar panels powering essential equipment are properly free of particulate accumulation that may reduce photovoltaic performance. *See* Mohammad Reza Maghami et al., *Power Loss Due to Soiling on Solar Panel: A Review*, 59 Renewable and Sustainable Energy Revs. 1307 (2016).

[63] EPA makes passing references to the cost-feasibility of solar-powered or instrument air controller systems for remote sites, *see* 87 Fed. Reg. at 74,761–62, but acknowledges that it presently lacks sufficient information, *see id.* at 74,762 ("The EPA is specifically requesting more detailed information on the use of generators at sites without access to the grid to power pneumatic controllers, primarily to

re-evaluate its proposed requirements in order to minimize compliance and operational costs as well as foster technological innovation going forward.

III. In order to create a durable regulatory regime that our business community can rely on, any finalized rule must be grounded in the law.

A. EPA's November 15, 2021 "proposal" cannot trigger applicability for Quad Ob because it lacks regulatory text.

EPA continues to maintain that the applicability date of Quad Ob is the publication date of the November 15, 2021, preamble.[64] The Chamber urges EPA to instead use the publication date of the Methane Proposal, December 6, 2022, as the Quad Ob applicability date, for the reasons raised herein and in our earlier comments.

In support of using the November 2021 Notice publication date, EPA contends that neither the CAA nor the Administrative Procedure Act ("APA") *requires* an agency to provide "proposed regulatory text" prior to defining new sources for NSPS purposes.[65] But this overlooks CAA section 111, which defines "new source" as "any statutory source, the construction or modification of which is commenced after the publication of regulations (*or, if earlier, proposed regulations*) prescribing a standard of performance under this section which will be applicable to such source."[66] In an NSPS rulemaking, this NSPS-specific requirement supersedes the CAA's and APA's general rulemaking provisions that EPA cites. Mere description of the "subjects and issues involved" does not suffice.[67] Moreover, while "regulation" goes undefined in the CAA, the term is often synonymous with "rule," which is defined in the APA to mean, in relevant part, "the whole or a part of *an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy* or describing the

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power instrument air systems. The EPA is also interested in receiving more information on the costs associated with this equipment."). Further, EPA largely brushes aside concerns raised by numerous commenters about the reliability of zero-emission equipment, and the safety risks that can result from equipment failures. *See id.* at 74,764.

[64] *Id.* at 74,715 ("NSPS OOOOb would apply to all emissions sources ("affected facilities") identified in the proposed 40 CFR 60.5365b, except dry seal centrifugal compressors, that commenced construction, reconstruction, or modification after November 15, 2021."); *see also id.* at 74,716 ("We received comments on the November 2021 Notice that it lacks regulatory text and therefore should not be used to define new sources for purposes of NSPS OOOOb. The EPA disagrees for the following reasons." (footnote omitted)).

[65] *Id.* at 74,716. The Chamber points out that the two statutory provisions cited by EPA in support of its position—CAA section 307(d)(3) and APA section 553(b)(3)—simply elaborate upon the requirements for notices of proposed rulemaking. *See* 5 U.S.C. § 553(b)(3); 42 U.S.C. § 7607(d)(3). Neither has any bearing on determining the trigger date when NSPS become applicable to new sources.

[66] 42 U.S.C. § 7411(a)(2).

[67] *See* 87 Fed. Reg. at 74,716.

organization, procedure, or practice requirements of an agency."[68] This standard cannot be satisfied with a preamble devoid of the precise regulatory requirements intended to "implement" or "interpret" the CAA and take "future effect" on regulated entities. Rather, "proposed regulation[]" calls for the obvious—a proposed regulation—not a proposed preamble. The 2021 Notice did not provide regulated entities with sufficient notice of EPA's intended requirements, and this lack of fair notice places new sources in peril of potential liability because they will not have sufficient time to comply.

Further, EPA's approach to applicability dates—which is a sharp departure from over 30 years of NSPS rulemaking practice—creates a bad precedent for all future NSPS rulemakings. Until EPA publishes actual regulations, sources should not be required to prepare to comply with them. Nothing about EPA's expressed position would prevent EPA from establishing completely premature applicability dates by simply announcing its intention to later propose rules of some kind at an unspecified date in the extended future. In short, this aspect of the proposal leaves open the possibility of years of uncertainty, circumventing exactly the risk that Congress sought to foreclose by imposing the obligation to propose regulations in order to set the applicability date, which further presupposes that EPA would take no more than a year to complete any rulemaking.[69]

Aside from the legal uncertainties of this position, EPA's proposed interpretation of its authority raises practical and enforceability concerns. Owners and operators that constructed, modified, or reconstructed sources between the publication dates of the November 2021 Notice and the November 2022 Methane Proposal were forced to guess at uncertain regulatory requirements based on the preamble text alone. This naturally invites concerns over due process and fair notice—which only serve to compound the potential legal infirmities.[70]

EPA's approach also undermines the specific federalism scheme that Congress designed under CAA section 111. Given that NSPS applicability dates are the dividing lines between sources subject to direct regulation by EPA under an NSPS and those governed by state programs as existing sources, EPA has altered the balance between state and federal regulation, and expanded its own jurisdiction beyond the bounds that

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[68] 5 U.S.C. § 551(4) (emphasis added).

[69] *See* 42 U.S.C. § 7607.

[70] *See United States v. Hoechst Celanese Corp.*, 128 F.3d 216 (4th Cir. 1997) (EPA cannot penalize company for relying on reasonable interpretation of regulation where EPA had not provided notice of differing interpretation and where EPA interpretation was not "ascertainably certain"); *see also Gen. Elec. Co. v. EPA*, 53 F.3d 1324, 1328–29 (D.C. Cir. 1995) ("In the absence of notice—for example, where the regulation is not sufficiently clear to warn a party about what is expected of it—an agency may not deprive a party of property by imposing civil or criminal liability.").

Congress intended by attempting to use a publication without corresponding regulatory text as the applicability date.

There have already been years of uncertainty regarding methane regulations for the oil and natural gas sector under CAA section 111. The Chamber respectfully submits that it would be unwise for EPA to take an approach that, at the very least, raises serious statutory-interpretation and constitutional concerns and risks violating the CAA and other legal requirements over a mere 13-month time period between the release of the November 2021 Notice and this Methane Proposal. Rather than jeopardizing the durability of the rule, EPA should adhere to its longstanding practice of using the publication of regulatory text as the applicability date for the NSPS.

B. EPA should not expand the scope of the source category without undertaking the required endangerment and significant contribution findings.

As noted in our comment letter on the November 2021 Notice,[71] EPA must make the necessary findings under the CAA before expanding its regulations under Section 111. The Chamber has attached those prior comments and incorporates them here. In addition, we note that in the Methane Proposal, EPA seeks to impose emissions standards on dry seal centrifugal compressors as part of NSPS Quad Ob and EG Quad Oc.[72] We remain concerned that EPA has not followed the necessary process to demonstrate a legitimate nexus between the proposed additional sources—dry seal centrifugal compressors—and the existing sources within the category to be regulated, nor undertaken a process to expand the source category (or create a new one), consistent with the requirements of CAA section 111(b)(1)(A).[73]

To regulate GHG emissions in the oil and natural gas sector under CAA section 111, EPA must determine through rulemaking that (1) such "air pollution" endangers public health or welfare and (2) the pollutant-specific emissions from each of these sectors "contributes significantly" to that air pollution.[74] Requiring such a finding helps ensure that the imposition of new rules will have a meaningful effect on a meaningful problem. EPA failed to comply with these statutory requirements in 2012 when transmission and storage sources were improperly brought into the production and

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[71] *See* Chamber January 2022 Comment Letter, at 10–11.

[72] *See* 87 Fed. Reg. at 74,716 ("In this rulemaking, the EPA is proposing standards for dry seal centrifugal compressor and intermittent bleed pneumatic controllers for the first time in NSPS OOOOb and EG OOOOc."); *see also id.* at 74,788–92 (outlining the proposed standards).

[73] *See* 42 U.S.C. § 7411(b)(1)(A)

[74] *Id.*

processing segments without making the requisite findings.[75] As the original expansion of the source category to transmission and storage did not include the requisite statutory findings, if EPA now adds dry seal centrifugal compressors to the transmission and storage segment, it would continue to improperly expand the source category in violation of the statute.

As it presently stands, the Methane Proposal would create standards for dry seal centrifugal compressors that were previously not regulated under NSPS and that are not described in the November 2021 Notice. And it would do so without any analysis of whether the operations share a proper commonality with the activities under the production and processing and transmission and storage segments. EPA should therefore take this opportunity to help ensure the legal durability of these important proposed regulations by making all requisite findings for the transmission and storage segment, including those for dry seal centrifugal compressors.

C. The proposed "Super-Emitter Response Program" goes beyond EPA's CAA authority and raises numerous practical concerns.

The EPA proposes a "super-emitter response program" whereby EPA-certified third parties would be authorized to issue notices requiring owners and operators to take corrective action following the detection of "super-emitting events," defined as emissions of 100 kilograms of methane per hour or larger.[76] As proposed, EPA would play no role in verifying the accuracy of the underlying information in these notices before they are issued directly to owners and operators, who would then have to initiate a root cause analysis within five days of receiving the notification, and completion of correction action within ten days of receiving the notification. The agency also proposes to make these notifications publicly available without taking any steps to verify the information included in the notification. EPA proposes to certify "notifiers" based on demonstration of "technical expertise" in any of three remote detection technologies—remote-sensing aircraft, mobile monitoring platforms, or satellites.[77]

The Chamber agrees with the goal of identifying and addressing large emissions events that meet a specified threshold; however, the Chamber is concerned about the proposed program, which represents an unprecedented attempt under the CAA to vest in private parties the opportunity to impose enforceable legal obligations on another private party, and would do so without appropriate safeguards to ensure the accuracy of the reporting before placing response obligations on owners and operators. To our knowledge, the program would be the first time that EPA has asserted authority under

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[75] *See* 77 Fed. Reg. 49,490, 49,496-99 (Aug. 16, 2012).

[76] *See* 87 Fed. Reg. at 74,747–48.

[77] *Id.* at 74,749–50.

the CAA to create regulatory obligations for affected facilities based on monitoring conducted by unaffiliated third parties and without playing any role at all in verifying the information before imposing legal obligations on other private parties. In support of this unusual delegation of regulatory authority, EPA characterizes the program as simply a BSER requiring monitoring and correction of unintentional releases, akin to LDAR,[78] but evades the central concern that it is private parties—not EPA, states, or regulated entities—who would be monitoring, notifying, and triggering the associated regulatory obligations. CAA section 114 outlines EPA's authority to establish monitoring requirements and limits that authority to four entities: (1) any person who owns or operates any emissions source; (2) certain entities that manufacture emissions control or process equipment; (3) those with information "necessary for the purposes" of CAA section 114; and (4) those "subject to the requirements of this Act."[79] The third-party notifiers that EPA describes do not fall within any of these four categories. Where Congress has reserved a place for private-citizen involvement in regulatory enforcement, such participation is limited to citizen suits under CAA section 304, which notably vests in a court the ability to determine the relief to which private citizens may prove themselves entitled.

The proposed program would remove the protections of even agency review---let alone the judicial system---in a way not authorized by Congress or the Constitution, by unlawfully delegating the enforcement powers of the executive and the adjudicatory powers of the courts to private, unelected individuals.[80] As compared with objections to transfers of authority among the governmental branches, "the difficulties sparked by such allocations are even more prevalent in the context of agency delegations to private individuals."[81] Moreover, such a delegation would give rise to due process problems, including concerns about bias and inconsistent or otherwise arbitrary enforcement

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[78] *Id.* at 74,752 ("[T]he EPA believes that super-emitter emissions events from unintentional releases tend to occur as a result of equipment malfunctions and/or poor operations; therefore, the BSER for super-emitter emissions events would be to correct the malfunction or operational issues and resume normal operations consistent with the standards or requirements applicable to the source(s) of the super-emitter emissions event in this proposed rule.").

[79] *See* 42 U.S.C. § 7414(a)(1).

[80] *See Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936) (describing an impermissible delegation of public power to private entities as "clearly arbitrary" and "clearly a denial of rights safeguarded by the due process clause of the Fifth Amendment"); *see also Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*, 53 F.4th 869, 875 (5th Cir. 2022).

[81] *Nat'l Ass'n of Regul. Util. Comm'rs v. FCC*, 737 F.2d 1095, 1143 (D.C. Cir. 1984) (per curiam); *see also Perot v. FEC*, 97 F.3d 553, 559 (D.C. Cir. 1996) ("We agree with the general proposition that when Congress has specifically vested an agency with the authority to administer a statute, it may not shift that responsibility to a private actor . . . .") (citing *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 537 (1935)).

practices.[82] While EPA is "free to seek advice from whatever sources [it] deems appropriate," it must nevertheless "retain[] ultimate authority" with respect to its regulation or action.[83] Here, EPA would play no role in vetting or verifying third-party data before notices are sent to operators. As a result, the program as proposed risks improperly ceding to private parties EPA's final regulatory say on super-emitting events, and therefore warrants reconsideration to ensure its lawfulness and effectiveness.

The proposed program is not legally viable without major changes, and therefore risks undermining the durability of EPA's Methane Proposal. Setting aside the legal problems, the Chamber also notes various practical problems relating to the proposal. First, while the Chamber agrees that verified emissions events should be mitigated in a timely manner, the proposed response timeline—requiring operators to analyze the relevant data and identify the cause of an alleged emissions event within five calendar days from notification, and requiring completion of corrective action within ten days of notification—would likely create compliance challenges and risk operational disruptions for owners and operators.[84] Operators cannot predict when and where third parties will conduct monitoring; the location of the subject equipment may be at remote locations, and personnel may not always be immediately available. Even when operators are able to respond to these unverified notifications in the proposed timeline, doing so on such an expedited basis risks misdirecting compliance resources. The Chamber recommends revising these timelines to provide additional time, and at the very least so that they are business days, not calendar days.

Second, the Chamber notes that EPA's proposed procedure for approval of notifiers is unduly vague and doesn't provide sufficient safeguards. EPA proposes that it would approve any party that demonstrates "technical expertise in the specific technologies and detection methodologies proposed for the identification of super-emitter emissions events (i.e., remote-sensing aircraft, mobile monitoring platforms, or satellite)," including "in the use of the detection technology and interpretation, or analysis, of the data collected by the technology."[85] As a preliminary matter, EPA should specify that the "specific technologies and detection methodologies" that can support notifier approval so as to ensure such technologies are accurate, reliable, and approved by EPA. Moreover, notifiers should be required to meet substantially similar minimum criteria as operators, such as providing plans to describe technologies, methodologies, quality assurance / quality control protocol and metrics, and initial and periodic

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[82] The Supreme Court has interpreted the Due Process Clause to protect principles of fundamental fairness, including the notion that decisionmakers must be disinterested and unbiased. *See, e.g.*, *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

[83] *See Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1488 (9th Cir. 1992).

[84] *Id.* at 74,751.

[85] *Id.* at 74,750.

training. Notifiers should also be required to certify that they have no conflicts of interest (e.g. employment by competitor companies) and made subject to periodic recertification. These additional requirements will help reduce the risk that individuals without proper training or experience inaccurately record or report information or accidentally report information to the wrong owner or operator based on confusion about the ownership of a facility or the source of the alleged emission event. While the Chamber supports the goal of EPA's proposed provisions providing a process for removing a notifier from the approved super-emitter notification list upon demonstration of "meaningful, demonstrable errors," owners and operators should not bear the burden of proof in establishing that a notice was erroneous, especially where that burden will be extremely difficult to carry in practice given EPA's proposal that "failure of the operator to find the source of the super-emitter event upon subsequent inspection shall not be proof, by itself."[86]

Third, the Chamber notes that the "as soon as practicable" standard for third-party notifiers is vague and provides no assurance that the time between detection and notification will be sufficiently short for a meaningful follow-up investigation. Like most investigations, the ability to investigate emission events (e.g. access time-sensitive data, confirm a detection, identify the source, determine the cause) is sensitive to how soon the investigation can begin. It makes no sense to allow notifiers a flexible, and potentially long, timeline for submitting their notices and then require operators to respond on a tight, rigid timeline with no consideration of practicability. The Chamber urges EPA to set a maximum timeline for notifications under the program to be actionable by operators. The timelines should be similar to requirements set for operators. As a reference point, EPA proposes five calendar days for operators to receive screening results under the alternative periodic screening LDAR program.

Fourth, if any program concerning third-party notifiers were to move forward, EPA would need to specify that any such third-party notices will not constitute "credible evidence" under the CAA. "Credible evidence" refers to a collection of EPA regulations providing that both reference test and comparable non-reference test data may be used to prove or disprove violations of the CAA under the Title V, PSD/NSR, and other CAA programs.[87]

Fifth, EPA would need to require that any third-party monitors be required to adhere to the same standards and requirements as operators performing similar LDAR testing and reporting to EPA. Such monitors would need to be required not only to follow the same protocols as the regulated communities, but also to certify to the accuracy of any information submitted to EPA under such a program. In any finalized program, EPA

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[86] *Id.*

[87] *See* 62 Fed. Reg. 8314, 8316 (Feb. 24, 1997).

must ensure that there is an appropriate mechanism for sanctioning third-party monitors who repeatedly fail to provide verifiable or accurate reports.

Finally, notifiers should be required to submit the notices to EPA for independent verification by the agency, rather than directly to owners and operators. EPA should first evaluate the notifier's allegations and ensure that it was using proper methods and equipment before an owner or operator is required to conduct a lengthy root-cause analysis or otherwise take action to respond to the allegations. Comparable safeguards are found in state programs, such as the Texas Commission on Environmental Quality ("TCEQ") program where any information collected by a private individual demonstrating "possible violations of law" must be sent to the TCEQ rather than the owner or operator.[88] The TCEQ then evaluates the "value and credibility" of the information provided by the private party before determining whether to initiate an administrative action, or refer the case for enforcement, or treat the information received by the individual as a complaint and conduct a complaint investigation. Such provisions better ensure that operators are not forced to respond to unverified or inaccurate reports and potentially reduce the serious statutory and due process concerns presented by the proposed Super-Emitter Program.

In sum, the Chamber recommends that EPA remove this proposed program in its entirety from any final rule or defer action on this program to avoid unnecessary violations of law that would risk the durability of the Methane Proposal more broadly. In addition, even assuming EPA corrected legal problems with the program, the Chamber would also recommend that EPA revise the program to address the practical problems described above. As proposed, the provisions to ensure third-party notices are credible are inadequate and risk distracting or detracting from addressing real or more pressing environmental, health, and safety concerns without providing an environmental benefit. As currently proposed, the program would also force operators to spend significant resources on defending against even erroneous reports, including reports identifying the wrong operator or misidentifying compliant emissions events as unlawful). While the Chamber's suggested revisions would not suffice to make the proposed program lawful and workable, they would at least mitigate some problematic aspects of the program.

D. EPA's proposed definition of "legally and practically enforceable" is unjustifiably rigid and would disregard state emission standards that are actively enforced in fact.

EPA reiterates—but does not further elaborate upon—its proposed definition for the term "legally and practicably enforceable" as it relates to state emissions limits for

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[88] *See* 30 TAC § 70.4(a).

"storage vessel affected facilities" that limit their potential for VOC emissions below 6 tpy.[89] In effect, if EPA deems applicable state standards not "legally and practically enforceable," it would disregard the state limits and treat the storage vessels as uncontrolled for purposes of federal regulation.[90] This proposal thus has the potential to create substantial friction between EPA and the states, and could result in many more facilities becoming subject to federal emission standards.

EPA's proposed enforceability indicia put form over substance by ignoring how states *actually enforce* emissions limits in favor of a series of checkboxes. Based on these indicia, many state limits that states *actively enforce* could be deemed not "legally and practically enforceable," despite states having years of experience implementing storage vessel standards and enforcing these standards. Such an approach would be arbitrary and unsupported by evidence.

These concerns extend beyond the confines of the Methane Proposal. The question of legal and practicable enforceability is relevant across EPA's CAA stationary source programs, and EPA's proposed definition would conflict with the current approach used in NSR/PSD and Title V permitting. Moreover, in *National Mining Association v. EPA*, the D.C. Circuit admonished EPA for taking too narrow a view on state regulations that can limit potential emissions, finding that the agency's requirement that state limits, even those of "unassailable effectiveness," be federally enforceable under its Title V and PSD regulations would not reduce a source's potential to emit.[91] The court accordingly determined that EPA "sacrifice[d] a statutory objective in pursuit of ends that . . . have not been justified."[92] The regulations were then vacated and remanded.[93] And although EPA announced intentions to conduct a comprehensive rulemaking taking into account *National Mining*,[94] no such rulemaking has come to fruition.

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[89] 87 Fed. Reg. at 74,800; *see* 86 Fed. Reg. at 63,201–02 (proposed definition of "legally and practicably enforceable limit").

[90] *See* 86 Fed. Reg. at 63,202 ("Only those limits that include the elements described [in the proposed definition] will be considered 'legally and practicably enforceable' for purposes of determining the potential for VOC emissions from a single storage vessel or tank battery, and thus applicability (or non-applicability) of each single storage vessel or tank battery as an affected facility under the rule.").

[91] 59 F.3d 1351, 1364 (D.C. Cir. 1995).

[92] *Id.*

[93] *See Chemical Mfrs. Ass'n v. EPA*, 70 F.3d 637 (Table), 1995 WL 650098 (D.C. Cir. 1995).

[94] *See* Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, and Robert I. Van Heuvelen, Director, Office of Regulatory Enforcement, to Regional Office Addresses, Release of Interim Policy on Federal Enforceability of Limitation on Potential to Emit (Jan. 22, 1996), https://www.epa.gov/sites/default/files/2015-08/documents/pottoemi.pdf.

This proposed definition creates unnecessary legal vulnerabilities by including provisions such as this that raise serious legal and policy questions – in this instance, both federalism questions and questions about the extent of the Agency's authority under the CAA. It also ignores the importance of close collaboration between EPA and the states to ensure timely submission, approval, and oversight of state plans to regulate methane emissions from the oil and natural gas sector. The Chamber therefore recommends that EPA remove this provision from any rule that it finalizes. Doing so would serve the goal of creating a durable and practical regulatory regime that can be readily implemented and fosters cooperation with state partners.

At the very least, EPA should defer final action on any proposed definition of "legally and practicably enforceable" until such time as the agency elects to undertake a comprehensive, broad-based rulemaking to ensure consistency across CAA programs. To otherwise proceed risks creating a piecemeal, rule-by-rule regime that would ultimately create confusion among regulated parties and state regulators and inconsistencies across CAA programs.

E. EPA should withdraw the External Review Draft of Report on the Social Cost of Greenhouse Gases from this rulemaking and defer to the IWG's process for updating the SC-GHG values.

The Chamber supports appropriate consideration of GHG emissions as part of the cost-benefit analyses required under Executive Order 12866, where permissible under an agency's statutory authority. We also support continued efforts to refine and improve upon the Interagency Working Group's ("IWG") SC-GHG estimates, in particular to achieve greater transparency and opportunity for public input.[95] But here, the Chamber raises key concerns regarding EPA's approach to applying the SC-GHG estimates in the Methane Proposal, which are explained in greater detail in the Chamber's separate set of comments in this docket.[96]

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[95] *See* Aluminum Association, American Chemistry Council, American Exploration & Petroleum Council, American Farm Bureau Federation, American Fuel & Petrochemical Manufacturers, American Gas Association, American Highway Users Alliance, American Iron and Steel Institute, American Petroleum Institute, American Public Gas Association, American Public Power Association, Associated Builders and Contractors, Associated General Contractors of America, Council of Industrial Boiler Owners, The Fertilizer Institute, Independent Petroleum Association of America, Interstate Natural Gas Association of America, National Association of Manufacturers, National Lime Association, National Mining Association, National Rural Electric Cooperative Association, Portland Cement Association, and the U.S. Chamber of Commerce, Comments on Notice of Availability and Request for Comment on the "Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990," 86 Fed. Reg. 24,669 (June 21, 2021).

[96] *See* Chamber SC-GHG Comments, *supra* note 3.

IV. EPA should promptly make an "Inflation Reduction Act equivalence determination" and should not wait until all state implementation plans are submitted.

The Inflation Reduction Act of 2022 ("IRA") includes a methane fee that would start in 2025 at $900 per ton of methane based on calendar year 2024 emissions and then gradually increase.[97] However, the IRA provides that the methane fee will not take effect if (1) EPA finalizes standards that would result in "equivalent or greater emissions reductions as would be achieved by" EPA's November 2021 Notice, and (2) such NSPS and EG standards are in effect in all states.[98]

EPA states that implementation of the methane fee is outside the scope of the current rulemaking and that it will undertake separate rulemaking action to implement the fee provisions, including revisions to the EPA's Greenhouse Gas Reporting Program Subpart W regulations.[99] EPA requests comment on the criteria and approaches that the Administrator should consider in making the "IRA equivalence determination."[100] In light of this request, the Chamber offers the following comments.

First, given that the methane fee will take effect in 2025, the Chamber notes that it is critical that EPA make the equivalence determination as soon as practicable, and should not wait for all states to submit their plans, as doing so would unduly delay the determination and force operators in states that already have "equivalent" programs to pay potentially significant fees. EPA requests comments on whether it should make the IRA equivalency determination in advance of states having submitted fully approvable plans or instead make the evaluation and IRA equivalency determination at a later date once EPA has approved state plans and/or developed a Federal Plan.[101] Again, given that the start date for the methane fee will come before fully approved state EG plans are in place, the Chamber encourages EPA to make an evaluation by assuming designated facilities would be subject to their corresponding EG presumptive standards once state plans are implemented.[102]

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[97] *See* Inflation Reduction Act, Pub. L. No. 117-169, § 136(e)(1), 136 Stat. 1818, 2074 (codified at 42 U.S.C. § 7436).

[98] *Id.* § 136(e)(6); *see also supra* Section II.B.

[99] 87 Fed. Reg. at 74,720–21.

[100] *Id.*

[101] *See* 87 Fed. Reg. at 74,721.

[102] *See supra* Section II.B.

EPA also seeks comments on geographical elements of the evaluation.[103] Per the statutory language in CAA section 136(f)(6)(A)(i), the EPA's evaluation is to be done with respect to all states.[104] The Chamber encourages EPA to make this evaluation on both a national level and state-by-state level, and that a finding of equivalence under either approach should be sufficient to trigger the methane fee exemption.

In addition, EPA seeks comments on temporal elements of the evaluation.[105] For requirements phased in over a multi-year period, the Chamber encourages EPA to evaluate equivalence based on a multi-year evaluation of emission reductions rather than, as EPA proposes to do, considering emission reductions only upon full implementation of phased-in requirements (i.e., if a state phases in installation of zero-emitting pneumatic controllers over more than one year, the comparison should be made at the point that the emission guidelines require full use of zero-emitting controllers). EPA's proposed approach is inappropriately rigid and would ignore real-world emissions reductions.

V. Conclusion

The Chamber appreciates the opportunity to comment on the Methane Proposal and supports the direct Federal regulation of methane from the oil and natural gas sector and EPA's associated goals of "bring[ing] national consistency to level the regulatory playing field, help[ing to] promote technological innovation, and reduc[ing] both climate- and other health-harming pollution . . . [where] cost-effective reductions can be obtained."[106] We encourage EPA to develop a durable, legally compliant rule that advances these goals while also safeguarding domestic oil and natural gas production given the tremendous benefits it provides to America's economy and natural security. For the reasons above, and based on the information included in this letter and the attachments, we urge EPA to reevaluate and reconsider the portions of the Methane Proposal highlighted in these comments.

Sincerely,

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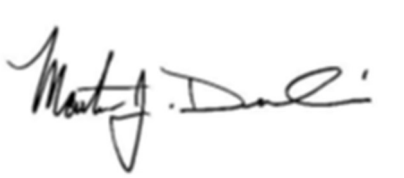
[103] *Id.*

[104] *See* 42 U.S.C. § 7436(f)(6)(A)(i).

[105] *Id.* at 74,721.

[106] 86 Fed. Reg. at 63,137.



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