

President Biden announces major proposed methane emission rules at 2021 UN Climate Change Conference

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On November 2, 2021, at COP26, President Joe Biden announced EPA's release of a proposed rule under the Clean Air Act that for the first time regulates methane and volatile organic compounds (VOC) emissions from existing oil and gas facilities and updates current methane and VOC rules applicable to new oil and gas facilities. This client update provides an overview of the proposal, a summary of other methane initiatives and key takeaways.

On November 2, 2021, at the UN Climate Change Conference in Glasgow, Scotland known as COP26, President Joe Biden announced U.S. Environmental Protection Agency's (EPA) release of a proposed rule (the Proposed Methane Rule) under the Clean Air Act (the CAA) that for the first time regulates emissions of methane, a greenhouse gas (GHG), and VOCs from existing oil and gas facilities in the production, processing, transmission and storage segments of the industry. The Proposed Methane Rule also updates, and in some respects tightens, existing methane and VOC regulations applicable to new, reconstructed and modified oil and gas facilities and solicits comments on potential future rules applicable to abandoned well sites and other oil and gas operations. Among other things, the Proposed Methane Rule would:

- For new facilities, increase the monitoring frequency of well sites and other facilities, require installation of zero emission technology for certain equipment and eliminate venting of associated gas from oil wells; and
- Require states to develop plans to subject oil and gas facilities in existence as of September 2015¹ to regulations similar to those applicable to new facilities, with certain exceptions.

According to one estimate, the Proposed Methane Rule is expected to cost the industry approximately \$1.2 billion annually and would bring nearly 700,000 older wells under regulation.

Although the Proposed Methane Rule was long expected given prior statements by the Biden administration, its announcement at COP26 reflects a focus of the Biden administration's climate change strategy on methane, a greenhouse gas said to have more than 80 times the global warming potential relative to carbon dioxide over a 20-year period, and complements a pledge signed by over 100 countries announced at COP26 to cut methane emissions.

This focus on methane comes as significant obstacles have emerged to the Biden administration's effort to curb carbon dioxide emissions, including (1) the removal from proposed congressional legislation, known as the Build Back Better Act, of the Clean Energy Performance Program (CEPP), a \$150 billion program designed to steer the power sector to zero carbon emitting energy sources through penalties and grants, and (2) the U.S. Supreme Court's decision to review EPA's legal authority to regulate carbon emissions from the power sector. Given the political and legal challenges presented by regulation of carbon emissions, the Proposed Methane Rule, as well as other initiatives to regulate methane emission discussed below, may be the preferred option of the Biden administration for regulating GHG

emissions at this stage of the presidential term.

Background

The Proposed Methane Rule is the latest example of the regulatory instability that has characterized federal climate change regulation over the past decade. In 2012 and 2016, as part of the Obama administration's climate change strategy, EPA issued rules regulating methane and VOC emissions from new, reconstructed and modified facilities in the oil and gas sector by establishing new source performance standards (NSPS) for these facilities under Section 111(b) of the CAA. At the same time, EPA began the process of developing methane and VOC regulations for existing oil and gas facilities under Section 111(d) of the CAA, a provision which requires EPA to develop regulations for existing sources in sectors that are the subject of NSPS under Section 111(b).

In 2017, the Trump administration halted this regulatory effort and in September 2020, issued a rule that scaled back the 2012 and 2016 rules by, among other things, narrowing their scope to VOC emissions from the production and processing sectors only (the 2020 Methane Rule).

With the election of President Biden and the change in congressional control, the regulatory momentum shifted once again. In January 2021, President Biden issued an executive order that, among other things, called on EPA to issue proposed rules regulating methane emissions from existing oil and gas facilities. In April 2021, the administration announced that it would be reexamining the current standards for new oil and gas facilities. In June 2021, Congress passed and President Biden signed a resolution under the Congressional Review Act rescinding the 2020 Methane Rule, effectively reviving the 2012 and 2016 rules in their original form (the Current Methane NSPS).²

Overview of the Proposed Methane Rule. The Proposed Methane Rule is designed to address the Biden administration's directives to EPA regarding regulation of methane from the oil and gas industry. The key elements of the rule are discussed below.

- **NSPS for new, reconstructed and modified sources.** The NSPS for new, reconstructed and modified sources contained in the Proposed Methane Rule is largely similar to the Current Methane NSPS. Like the Current Methane NSPS, it covers the production, processing, transmission and storage (but not distribution) segments of the industry. However, it differs from the Current Methane NSPS in a number of ways, including the following:
 - **Inspections of well sites and compressor stations.** While the Current Methane NSPS calls for semiannual inspection requirements for most well sites, the Proposed Methane Rule would vary inspection requirements based on annual estimated methane emissions. Well sites with estimated methane emissions of less than three tons per year would be subject to an initial inspection with no regular inspections thereafter and sites with estimated emissions of three tons per year or more would require quarterly inspections (although the rule includes an alternative proposal that would call for semiannual inspections for sites with estimated emissions of three to eight tons per year). Compressor stations would be subject to quarterly inspections as well.
 - **Zero emitting pneumatic controllers.** The Proposed Methane Rule would require pneumatic controllers in production, processing, transmission and storage facilities to have zero methane and VOC emissions (with the exception of sites in Alaska that do not have power). This equipment is largely unregulated under the Current Methane NSPS.
 - **Extending requirements to more types of pneumatic pumps.** The Proposed Methane Rule would extend the requirement to reduce methane emissions by 95% (where there is access to an on-site control device) to all natural gas-driven diaphragm and piston pumps in the production segment of the industry, and diaphragm pumps in the transmission segment.
 - **Eliminating venting of associated gas from oil wells.** Oil wells can produce significant volumes of gas, which is

not regulated under the Current Methane NSPS. According to EPA, venting of associated gas from oil wells releases significant amounts of methane into the atmosphere. The Proposed Methane Rule would require operators to eliminate venting of gas by either capturing and routing it to a sales line, if possible, or otherwise using it for onsite power or flaring it.

- **Emissions guidelines and “presumptive” performance standards for existing sources.** The Proposed Methane Rule includes emissions guidelines as well as corresponding performance standards EPA considers “presumptive” for sources in existence as of September 2015 that largely mirror the NSPS in the Proposed Methane Rule. Under Section 111(d) of the CAA, states have the flexibility to develop their own performance standards for existing sources as long as they meet the emissions guidelines established by EPA (which, under Section 111(d), are submitted to EPA for approval). Here, however, EPA telegraphed its view that the NSPS in the Proposed Methane Rule are, with a few exceptions, presumed to be acceptable to EPA. EPA expects that states will follow suit and propose standards for existing sources that match the standards for new sources.
- **Solicitation of comments for further rulemaking.** EPA is also soliciting comments on a number of open issues, including adding abandoned and unplugged wells, pipeline “pigging” operations and tank truck loading operations as regulated sources and the feasibility of requiring zero emitting pneumatic pumps at new and existing facilities with access to electric or solar power.

The Proposed Methane Rule, once formally published in the Federal Register, will open a 60-day comment period after which EPA will issue a supplemental notice responding to public input. The supplemental notice will also include the text of the proposed rule, which was absent in the notice issued on November 2.

Other legislative and regulatory initiatives on methane. The Proposed Methane Rule is only one of the initiatives contained in the Biden administration’s [U.S. Methane Emissions Reduction Action Plan](#) released on November 2, 2021, which outlines several other ongoing regulatory initiatives targeting methane. These include:

- regulations being developed by the Bureau of Land Management (BLM) to require operators on public lands to pay royalties for the venting or flaring of methane;
- stricter BLM and Bureau of Ocean Energy Management financial assurance requirements for oil and gas operators on public lands or waters; and
- a final rule issued on November 2, 2021 by the Pipeline and Hazardous Materials Safety Administration (PHMSA), applying safety requirements to 400,000 miles of previously unregulated pipelines, as well as planned future PHMSA rulemaking addressing the risk of leaks and ruptures from pipelines and large-scale releases from liquefied natural gas facilities.

In addition, the proposed Build Back Better Act would impose a fee on methane emissions from oil and gas facilities. However, the likelihood of this legislation becoming law at this point is unclear.

Key takeaways

- **Impact on industry expected to be modest.** As noted above, estimated compliance costs are \$1.2 billion annually across the oil and gas industry, which would be a small percentage of the total projected annual earnings of the ten largest oil and gas companies, which exceed \$70 billion per year. These rules have been anticipated for several years and many oil and gas companies have already begun to make investments to comply. Reaction to the Proposed Methane Rule from industry trade groups has been somewhat supportive based on public statements, a stark contrast to industry reaction to the Current Methane NSPS, which were vigorously opposed by oil and gas companies and industry groups, leading to lengthy legal challenges in federal courts. Whether similar challenges are ultimately brought once the rule is finalized remains to be seen.

- **Finalizing and implementing rules for existing sources may present political and legal challenges.** Implementation of the Proposed Methane Rule's emissions guidelines with respect to existing sources is subject to Section 111(d) of the CAA, which calls for a cooperative process with the states and requires states to submit plans to EPA for approval. Several state governors have announced opposition to the Proposed Methane Rule and it remains to be seen how cooperative states with leadership opposed to the administration's climate change priorities will be, particularly in light of federal-state conflicts that have emerged in other policy areas, such as COVID-19 policies. In addition, the law surrounding exactly how Section 111(d) is designed to work, including the flexibility states have in developing performance standards, the applicable compliance timetables as well as other issues, is unsettled and expected to be the subject of forthcoming rulemaking by EPA. The ultimate outcome of this rulemaking – which may itself become the subject of legal challenges – may impact and complicate EPA's efforts to finalize rules with respect existing sources.
- **Methane regulation of the oil and gas sector is just a single building block in the Biden administration's overall climate goals.** While the administration's focus on methane regulation will help advance the administration's climate change goals, meaningful progress towards these goals – 50 to 52% reduction from 2005 levels in economy-wide net GHG emissions by 2030 and a net zero carbon economy by 2050 – will require programs that address carbon dioxide emissions, which have been stymied to date. The Biden administration's key legislative proposal to curb carbon dioxide emissions from the power sector – the CEPP – was removed from the Build Back Better Act being considered by Congress and the fate of the various zero-carbon tax incentives that remain in the legislation are uncertain. Finally, efforts to address carbon dioxide emissions through the regulatory process may be in doubt given the U.S. Supreme Court's decision to review EPA's authority to regulate such emissions from the power sector under the CAA.

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¹ Although the Proposed Methane Rule states that these regulations would apply to all facilities in existence as of the date of its publication in the Federal Register (which we expect will happen over the next several weeks), as a practical matter, facilities that came into existence after September 2015 are already subject to the standards for new sources currently in effect. We would expect that a final version of the Proposed Methane Rule will provide further clarity with respect to these applicability issues.

² The Congressional Review Act resolution left in place certain technical amendments to the Current Methane NSPS issued by EPA in September 2020.