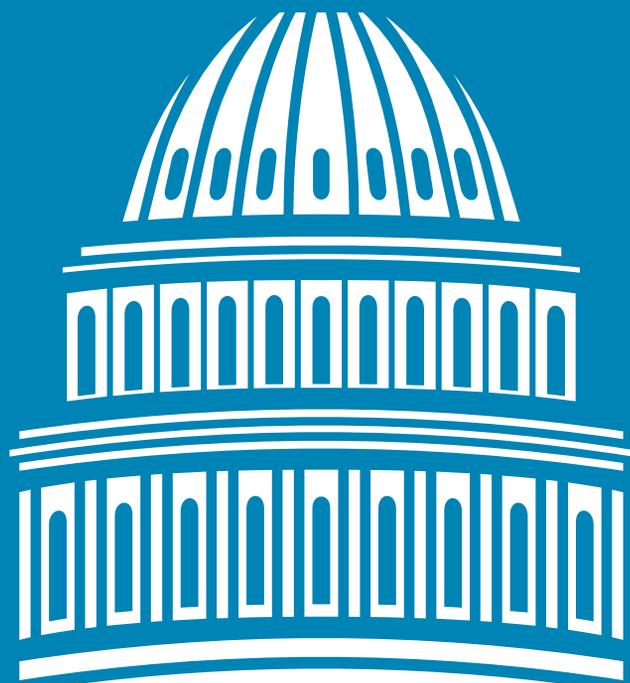


# IPAA ACCESS

MAGAZINE



## CUTTING THROUGH THE RED TAPE OF COSTLY NEW REGULATIONS



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# Cutting through THE **RED TAPE** OF COSTLY NEW REGULATIONS

By Matt Kellogg, IPAA; Lee Fuller, IPAA,  
& James Elliott, Spilman Thomas & Battle, PLLC

**ON JAN. 14, 2015,** THE ADMINISTRATION ANNOUNCED NEW COSTLY AND BURDENSOME REGULATIONS TO CURB METHANE EMISSIONS FROM THE OIL AND NATURAL GAS SECTOR. THE NEED FOR SUCH REGULATIONS IS DEBATABLE. METHANE EMISSIONS FROM OIL AND NATURAL GAS PRODUCTION AND EXPLORATION ACCOUNT FOR ROUGHLY 1.1 TO 1.3 PERCENT OF TOTAL U.S. GREEN HOUSE GAS (GHG) EMISSIONS. SINCE 2008, U.S. SHALE GAS PRODUCTION HAS GROWN 400 PERCENT, WHILE METHANE EMISSIONS HAVE DECLINED 13.3 PERCENT. WHILE THE SPECIFIC REGULATORY PATHWAY, PRESENTLY, IS UNCLEAR, THIS ANNOUNCEMENT IS THE LATEST IN A YEARS-LONG EFFORT BY THE ADMINISTRATION TO IMPOSE ADDITIONAL AIR REGULATIONS ON THE OIL AND NATURAL GAS EXPLORATION AND PRODUCTION SECTOR. IPAA IS ACTIVELY INVOLVED IN GOVERNMENT RELATIONS AND HAS UNDERTAKEN A LEGAL STRATEGY TO PARTICIPATE IN THE VARIOUS POLICIES PROPOSALS. ACTIVE ENGAGEMENT BY IPAA AND ITS MEMBER

COMPANIES IS NECESSARY TO MINIMIZE THE IMPOSITION OF COSTLY REGULATIONS THAT PROVIDE FEW ENVIRONMENTAL BENEFITS.



# Active engagement by IPAA and its member companies is necessary to minimize the damage to the industry as the Administration seeks to implement its dubious policy decisions concerning air emissions.

## NSPS Subpart OOOO – VOC Reductions

The U.S. Environmental Protection Agency's (EPA) initial regulatory initiative to curb air emissions from the oil and natural gas sectors came in the fall of 2012, in the form of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). Despite arguments from IPAA and other industry representatives regarding inaccurate/incomplete data and an inappropriate "one-size-fits all" approach to controls, EPA finalized its rule in August 2012 with minimal changes. Consequently, IPAA, along with a number of state cooperating associations, challenged the rule in DC Circuit Court and petitioned EPA for reconsideration of the rule. In response to IPAA efforts, EPA has revised the rule twice – initially dealing with storage vessel regulations and then the handling of liquids and emission control requirements during well completions, as well as the definition of a "low pressure well." EPA failed to address certain comments filed by IPAA and IPAA is actively involved in negotiations with EPA to resolve its concerns.

## Methane

On Jan. 14, 2015, the White House doubled down on its efforts by directing federal agencies to further reduce methane emissions from the oil and natural gas sector. The Administration announced that EPA will propose new regulations to reduce methane emissions directly (beyond Subpart OOOO VOC controls, which yield methane co-benefit reductions). EPA intends to propose new source performance standards under Section 111(b) of the Clean Air Act during the summer of 2015 and finalize the regulations in 2016. The exact nature of the rulemaking remains unclear. Purportedly, the proposed standards are to be based on technical white papers that EPA published in June 2014 on

potential sources of methane emissions and possible control technologies. From the industry's perspective, the white papers largely demonstrated a) what EPA does not know about the industry; and b) that more information is needed. Nonetheless, the Administration seems intent on forging ahead based on inadequate data. As commented on by industry (and noted by the Administration), the economic incentive to capture as much methane as possible exists. That economic incentive will drive new reduction technologies more efficiently and effectively than command-and-control regulations based on insufficient data.

While EPA has indicated it does not intend to regulate methane emissions from existing sources in the oil and natural gas sector, such assertions give the industry little comfort. EPA has clearly indicated its willingness to promulgate controversial regulations under Section 111(d) for existing sources as evidenced by the Clean Power Plan Rule. Upon promulgation of NSPS for new or modified sources under Section 111(b), there is little doubt environmental organizations will sue EPA to force the Agency to promulgate NSPS for existing oil and gas sources under Section 111(d). EPA seems unconcerned with opening a regulatory Pandora's box associated with the possible regulation of over one million wells. The need for a costly existing source program is highly suspect as emissions from existing sources decline significantly over the life of a well. Existing oil and natural gas operations likely account for fewer than one percent of total U.S. other emissions. At this point, the Administration has generally referred to the "oil and gas sector" as a whole and has not differentiated regulatory options for production versus transmission versus distribution. The Administration should carefully consider options for each subsector based on proven cost-effective technologies.

## BLM Venting and Flaring

Pursuant to the White House's direction, BLM has initiated efforts to address the venting and flaring of methane on federal lands – an effort

known as BLM Onshore Order No. 9. While no specific proposal has been put forth, BLM has held a number of listening sessions on ideas to include in this regulatory proposal. IPAA has expressed many concerns with the pathway that BLM is taking and the potential venting and flaring requirements that could be imposed on operations on federal lands, including the prescription of technological requirements on operations by BLM that may significantly alter the economics of federal land operations. IPAA attended a number of the BLM listening sessions and participated in meetings with White House and agency staff. In May 2014, IPAA submitted comments disagreeing with BLM's approach. Additional action is expected this Spring/Summer.

## Ozone NAAQS

Overlaying all these oil and natural gas centric regulatory proposals is the recently announced proposal, by EPA, to revise the National Ambient Air Quality Standard (NAAQS) for ozone. Permitting of oil and gas operations in nonattainment areas introduces a whole host of obligations and controls not yet experienced by many within the oil and gas industry.

On Nov. 25, 2014, EPA proposed to lower the NAAQS for ozone from 75 parts per billion ("ppb") to between 65 ppb and 70 ppb. Nevertheless, the proposed rulemaking accepted comments on a standard as low as 60 ppb, which by many accounts would have placed a majority of the country in nonattainment. EPA claims the NAAQS must be revised to protect public health, with an adequate margin of safety while assuring the public that, "the vast majority of U.S. counties would meet the proposed standards by 2025 just with the rules and programs now in place or under way." So, if the national federal requirements will essentially protect the overwhelming number of areas that would be placed in Ozone NAAQS nonattainment by a lower standard, then why subject the entire country with additional burdensome local actions that would be required from such categorization?

Stated another way, if the existing (and anticipated) federal regulations will achieve a lower standard for the “vast majority,” is a lower standard necessary?

Moreover, the scant minority of areas that EPA has determined will not meet the proposed ambient standards by 2025 are essentially the same areas that have failed to meet every Ozone NAAQS that has been promulgated since the Clean Air Act was passed in 1970. These areas are already subject to extensive regulations under Part D of the Act and would be subjected to the same stringent mobile source requirements and existing and new stationary source regulations under the current 75 ppb NAAQS as they would be under the proposed standard by 2025. On the other hand, for the remaining areas that EPA projects would reach attainment using only national federal mandates regardless of the NAAQS, promulgating a lower NAAQS would unnecessarily compel them to be subject to the requirements of Part D of the Clean Air Act. These requirements would impose on those areas emissions controls on new sources, including offsets, which would be burdensome, cost ineffective and unnecessary. Similarly, the requirements could impose on numerous communities the implementation of costly, burdensome and unnecessary vehicle inspection and maintenance programs. Additionally, EPA’s failure to implement the 2008 ozone standard calls into the question the need and feasibility of planning to comply with both ozone standards.

It should be noted that the legality of a number of existing and proposed EPA rules relied upon to assert that the proposed standard can be met by 2025, with little additional effort from states, is being challenged in various courts. In its Fact Sheet released with the proposed rule, EPA touts the final “Mercury and Air Toxics Standards” as one of the rules relied upon to minimize the regulatory burden on states. Interestingly enough, a day before EPA’s release of its proposed ozone NAAQS, the Supreme Court of the United States agreed to hear the industry’s challenge to the Mercury and Air Toxic Standards. Another cited proposed regulation that EPA relies upon, the Clean Power Plan, is also being challenged through numerous lawsuits. Although it may be too early to allege

EPA’s position is built on a house of cards, a successful challenge by industry on any one of its challenges to the underlying rules or proposals may call into question EPA’s assertion concerning the ability of states to meet the standard easily and the estimated cost to the country of meeting the proposed ozone standard.

#### IPAA Path Forward

The Administration’s goal (announced on Jan. 14, 2015) to reduce methane emissions by 40-45 percent from 2012 levels by 2025 is laudable. How and where

those reductions are made is critical to the health of the oil and gas sector as a whole. IPAA will continue to work with the Administration to achieve those reductions in the most cost-effective manner with the greatest flexibility to independent operators. As mentioned above, the economic incentive to reduce methane emissions already exists – and is perhaps strongest for the E&P sector. Overly prescriptive and inflexible standards will stifle innovation and limit independent operators’ ability to reduce emissions in a manner that is cost-effective to them. ●



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