



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 60**

**[EPA-HQ-OAR-2010-0505; FRL-9970-55-OAR]**

**RIN 2060-AT59**

### **Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; notice of data availability.

**SUMMARY:** The Environmental Protection Agency (EPA) is issuing this notice of data availability (NODA) in support of the proposed rule titled “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements,” which was published on June 16, 2017. In this document, the EPA is providing additional information on several topics raised by stakeholders and is soliciting comment on the information presented. The two topic areas are the legal authority to issue a stay and the technological, resource, and economic challenges with implementing the fugitive emissions requirements, well site pneumatic pump standards, and the requirements for certification of closed vent systems by a professional engineer. This notice also provides an updated cost savings and forgone benefits analysis for the 2-year stay.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2010-0505, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish

any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Tsigotis, Sector Policies and Programs Division (D205-01), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (888) 627-7764; email address: [airaction@epa.gov](mailto:airaction@epa.gov).

**SUPPLEMENTARY INFORMATION:**

*Organization of This Document.* The information presented in this document is organized as follows:

- I. Background
- II. Legal Authority
- III. Stakeholder Input on Sources' Ability to Implement Requirements
  - A. Fugitive Emissions Requirements
  - B. Well Site Pneumatic Pump Requirements
  - C. Professional Engineering Certification Requirements
- IV. Estimated Cost Savings, Forgone Benefits, and Net Benefits of the Proposed Stay

**I. Background**

On June 16, 2017, the EPA proposed to stay for 2 years certain requirements that are contained within the final rule titled "Oil and Natural Gas Sector: Emission Standards for New,

Reconstructed, and Modified Sources,” published in the **Federal Register** at 81 FR 35824, June 3, 2016 (2016 Rule). This action proposed to stay the fugitive emissions requirements, the well site pneumatic pump requirements, and the requirements for certification of closed vent systems by a professional engineer for 2 years, in order to provide the EPA with sufficient time to propose, take public comment on, and issue a final action on the issues concerning the specific requirements on which the EPA has granted reconsideration. 82 FR 27645, June 16, 2017. While the proposed 2-year stay was based on the time needed to complete a rulemaking to address the issues for which we have granted reconsideration, during this time, the EPA plans to also address all remaining issues raised in these reconsideration petitions regarding fugitive emissions, pneumatic pumps, and certification by professional engineer requirements. The EPA believes that addressing all issues related to these requirements would provide the regulated entities and the general public clarity and certainty regarding these requirements.

Subsequent to the 82 FR 27645, June 16, 2017, proposal, the Agency has heard a broad range of questions, concerns, and constructive suggestions from stakeholders on how the proposed rule could be improved. This document is not intended to address all of the issues that have been raised; we will summarize and respond to all comments in the final rule. Rather, the purpose of this document is to describe and seek comment on several ideas raised by stakeholders that may go beyond those for which the Agency sought comment in the June 16, 2017, proposal. In this document, we describe the specific issues and ideas raised by stakeholders and explain which of those ideas we consider to be within or possibly beyond the scope of comment already requested. The purpose of this document is to bring these ideas to the attention of other stakeholders and the public so that they may also provide comments to assist in developing a final rule.

The feedback the EPA has received since proposing the stay relates to the EPA's legal authority to stay these requirements and lack of clarity and other challenges in implementing these three requirements. With respect to the implementation challenges, the commenters recommend, as an alternative to the proposed stay, that the EPA amend the 2016 Rule to extend the periods currently provided in the 2016 Rule for establishing the necessary infrastructure and phasing in the requirements for conducting the initial monitoring survey of fugitive emissions and for routing well site pneumatic pump emissions to onsite controls or processes. The feedback similarly suggests the need for a phase-in period to allow a scale-up of the number of qualified professional engineers to meet the demand imposed by the 2016 Rule. The EPA is soliciting comments on this recommendation. Specifically, the EPA is soliciting relevant data and information, in particular those related to the EPA's analyses and assumptions that were used to establish the phase-in periods in the 2016 Rule, to help inform the EPA why the appropriate duration of these periods may have been underestimated, as the feedback suggests. Further, with respect to the requirement for certification of closed vent systems by a professional engineer, while in the preamble to the 2015 proposed New Source Performance Standards (NSPS) the EPA had suggested such certification as a potential remedy where a storage vessel is improperly designed,<sup>1</sup> the final 2016 Rule requires such certification for demonstrating compliance with not only the storage vessel emission standards, but a number of other emission standards, thereby affecting a large number of affected sources.<sup>2</sup> According to the feedback received, the immediate high demand for qualified professional engineers to meet this certification requirement has made implementation of this requirement quite challenging. In light of the feedback, the EPA is soliciting comments, data, and any other information that would help the EPA determine whether

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<sup>1</sup> 80 FR 56649, September 18, 2015.

<sup>2</sup> 40 CFR 60.5411a(d).

a phase-in period for this requirement is needed and, if so, the length of such period. While the comment period on the June 16, 2017, proposal closed on August 9, 2017, comments on this action may include further commentary on statements made in the proposed 2-year stay.

This action also provides an updated cost analysis for the 2-year stay, which reflects a revised time frame, as well as corrects a technical error in the initial analysis. This correction results in a slight increase in cost savings associated with the proposed 2-year stay. The EPA has also updated this analysis to include forgone benefits and net benefits from the proposed 2-year stay. For more information, see section IV of this document.

## **II. Legal Authority**

The EPA received comments from stakeholders on our legal authority to stay these requirements or otherwise amend the 2016 Rule to extend the “phase-in” periods currently provided in that rule. See Docket ID No. EPA-HQ-OAR-2010-0505-10577. Specifically, noting that these requirements are not mandated by Clean Air Act (CAA) section 111(b)(1)(B), the commenter interprets CAA section 111 as authorizing the EPA to extend compliance deadlines or establish future compliance dates. The commenter also cites section 705 of the Administrative Procedure Act (APA) to provide the EPA authority to stay these requirements pending judicial review. The commenter interprets the term “postpone” in section 705 of the APA to include “delay, defer, adjourn, shelve, table, and put on hold.” *Id.* at 7. Lastly, the commenter argues that the EPA’s general rulemaking authority under section 301(a) of the CAA authorizes a rulemaking staying these requirements because “Congress has not written a ‘clear impediment to the issuance’” of such stay. *Id.* at 12 (citations omitted). The EPA solicits comments on these legal theories provided in this comment document. See Docket ID No. EPA-HQ-OAR-2010-0505-10577.

For the reasons stated below, the EPA has legal authority to amend the 2016 Rule to either stay certain provisions or otherwise revise certain aspects of the rule. The EPA promulgated the 2016 Rule pursuant to section 111(b)(1)(B) of the CAA in accordance with the notice-and-comment rulemaking procedures under section 307(d) of the CAA. 81 FR 35828. The EPA is using the same statutory authority and following the same procedures in the present rulemaking to amend the 2016 Rule to stay certain requirements (as described in the June 16, 2017, proposal) or make the suggested changes to aspects of these requirements as described in this action (*i.e.*, extension or provision of “phase-in” periods). In addition, section 301(a) of the CAA provides the Agency with broad authority to prescribe regulations, including revisions to prior rulemakings, as necessary to carry out the Administrator’s authorized functions under the statute. “The power to decide in the first instance carries with it the power to reconsider.”

*Trujillo v. Gen. Elec. Co.*, 621 F.2d 1084, 1086 (10th Cir. 1980); see also, *United Gas Improvement Co. v. Callery Properties, Inc.*, 382 U.S. 223, 229 (1965); *Mazaleski v. Treusdell*, 562 F.2d 701, 720 (D.C. Cir. 1977).

Section 111 of the CAA requires the EPA to list a source category under that section if, “in [the EPA Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” Once a source category is listed, CAA section 111(b)(1)(B) requires that the EPA promulgate “standards of performance” for new sources in such source category. In addition, CAA section 111(b)(1)(B) requires the EPA to “at least every 8 years review and, if appropriate, revise” performance standards unless the “Administrator determines that such review is not appropriate in light of readily available information on the efficacy” of the standard. In 1979, the EPA published a list of source categories, including Oil and Natural Gas, under section 111(b) of the CAA. See

*Priority List and Additions to the List of Categories of Stationary Sources*, 44 FR 49222 (August 21, 1979) ("1979 Priority List"). In 1985, the EPA promulgated NSPS for this source category that addressed volatile organic compound(s) (VOC) emissions from leaking components at onshore natural gas processing plants (40 CFR part 60, subpart LLL) and sulfur dioxide emissions from natural gas processing plants (40 CFR part 60, subpart KKK). In 2012, the EPA conducted its required review under CAA section 111(b)(1)(B), and promulgated NSPS subpart OOOO, which included updates to subparts KKK and LLL standards as well as additional VOC standards for this source category.

In addition to the mandatory obligations described above, the EPA has discretion under CAA section 111(b)(1)(B) to add new standards of performance for additional pollutants or emission sources not previously covered concurrent with, or independent of, the 8-year review. Pursuant to section 111(b)(1)(B) of the CAA, the EPA has promulgated new performance standards for previously unregulated sources concurrent with the 8-year review. See, *e.g.*, 71 FR 9866 (February 27, 2006) (new particular matter standards for boilers); 73 FR 35838 (June 24, 2008) (new nitrogen oxide standards for additional sources at refineries); 77 FR 49490 (August 16, 2012) (new VOC standards for additional sources at oil and gas facilities). However, the appropriate time for promulgating such new standards may not always align with the 8-year review cycle. See, *e.g.*, 73 FR 35838, 35859. (The EPA did not promulgate performance standards for greenhouse gas emissions as part of the 8-year review of the NSPS for refineries because the Agency was still in the process of gathering information and reviewing controls.) While the EPA could conduct the required periodic review sooner than every 8 years, which would potentially allow the EPA to conduct the review and set additional standards concurrently, the EPA does not believe that the schedule for the statutorily required review should be driven by

the timing for promulgating additional performance standards that are discretionary. On the other hand, there is no reason that the EPA's authority and discretion to promulgate such standards should be constrained by the timing of the 8-year review. The EPA, therefore, reasonably interprets CAA section 111(b)(1)(B) to allow the Agency to exercise its discretion to promulgate new performance standards for additional sources or pollutants when appropriate (concurrent with or independent of the 8-year review).

Pursuant to this authority under section 111(b)(1)(B) of the CAA, the EPA promulgated the 2016 Rule which contained, among other things, a number of new performance standards for emission sources not previously covered, including the fugitive emissions components at well sites and compressor stations, as well as pneumatic pumps at well sites.<sup>3</sup> The EPA promulgated the fugitive emissions requirements for well sites and compressor stations pursuant to section 111(h) of the CAA, which authorizes the EPA to set a design, equipment, work practice, or operational standard where it is not technically feasible to prescribe or enforce an emission standard. 80 FR 56593, 56637 (September 18, 2015). A work practice standard generally consists of a set of activities that sources must perform and a time period for completing the activities. See, *e.g.*, 40 CFR 60.632 (180 days from initial startup to comply with the requirements to detect and repair leaks at onshore oil and natural gas processing plants). Similar to existing work practice standards, the fugitive emissions requirements in the 2016 Rule specify a set of activities (*e.g.*, developing an emission monitoring plan, conducting initial and subsequent surveys, repair or replacement, and resurvey of fugitive emissions components according to the plan) and time frames for performing the activities. 40 CFR 60.5397a.

Specifically, the 2016 Rule specifies a period of time (*i.e.*, until June 3, 2017, or 60 days after

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<sup>3</sup> The 2016 Rule also includes standards for reducing methane emissions from the oil and natural gas sector, as well as revisions to the previously promulgated Oil and Natural Gas NSPS (40 CFR part 60, subpart OOOO).

starting up production, whichever is later) for sources to establish the necessary infrastructure, develop a monitoring plan, secure the required personnel and equipment, and conduct the initial monitoring survey of fugitive emissions components at well sites and compressor stations. 81 FR 35858-9 and 35863, June 3, 2016.

The 2016 Rule similarly did not establish an emission limit for well site pneumatic pumps, but instead requires that emissions from well site pneumatic pumps be routed to an available control or process onsite, unless a qualified professional engineer certifies that it is not technically feasible to do so. As with the fugitive emissions requirements, the 2016 Rule similarly provided a period of time (until November 30, 2016) for owners and operators to conduct the ground work required for routing well site pneumatic pumps to an available onsite control or process (or, if it is not technically feasible to do so, for obtaining a certification by a qualified engineer of the technical infeasibility). 81 FR 35859, June 3, 2016.

The 2016 Rule also added a requirement that all closed vent systems routing emissions from storage vessels, compressors, and pneumatic pump affected facilities be certified by a qualified professional engineer. This certification requirement is not an emission standard under CAA section 111(a)(1) or a design, equipment, work practice, or operational standard under CAA section 111(h); it is a compliance measure that would provide additional assurance that sources are meeting the emission standards for storage vessels, compressors, and pneumatic pumps. Some of these emission standards, such as those for storage vessels and compressors, were promulgated in 2012 under section 111(b)(1)(B) of the CAA.

Through the June 16, 2017, action, the EPA is proposing to amend the 2016 Rule to stay the fugitive emissions requirements, the well site pneumatic pump requirements, and the certification requirement described above. Since then, the EPA has received suggestions that,

instead of staying these requirements, the EPA extend the current phase-in periods for the fugitive emissions requirements and well site pneumatic pump requirements, as well as providing one for the requirement for certification of closed vent systems by a professional engineer. Agencies have inherent authority to reconsider past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) (“*State Farm*”). This includes a decision regarding the appropriate length of the phase-in periods provided in the 2016 Rule for specific requirements, as well as whether to provide one for phasing in an additional compliance assurance measure, or whether to stay these three requirements at issue while they are being revised through rulemaking.

Section 301(a) of the CAA provides the EPA with broad rulemaking authority to carry out the CAA. Notwithstanding the potential constraint that other parts of the CAA may have on the EPA’s authority to stay a rule pursuant to CAA section 301(a), see *Natural Resources Defense Council, Inc. v. Reilly*, 976 F.2d 36, 41 (D.C. Cir. 1992), there is no such constraint here with respect to staying the fugitive emissions requirements, the well site pneumatic pump requirements, and the certification requirement in the 2016 Rule, the promulgation of which was discretionary and not compelled by CAA section 111(b)(1)(B). In a case analyzing a similar general rulemaking authority granted to the Federal Reserve Board by the Truth in Lending Act, the Supreme Court held quite broadly that, where “the empowering provision of a statute states simply that an agency may make such rules and regulations as necessary to carry out the provisions of an act, the validity of a regulation promulgated thereunder will be sustained so long as it is ‘reasonably related to the purposes of the enabling legislation.’” *Mourning v. Family*

*Publications Service, Inc.*, 411 U.S. 356, 369 (1973) (quoting *Thorpe v. Housing Authority of City of Durham*, 393 U.S. 268, 280–81 (1969)). In a CAA section 301(a) case, the District of Columbia Circuit Court of Appeals held that CAA section 301(a) authorizes the EPA to use rulemaking to issue the enhanced vehicle inspection and maintenance programs guidance under section 182 of the CAA. *Natural Res. Def. Council, Inc. v. EPA*, 22 F.3d 1125 (D.C. Cir. 1994). Noting the absence of any provision in CAA section 182 preventing issuing such guidance through rulemaking, the Court deferred to the Agency’s determination that the regulation was necessary as long as it provided a reasoned explanation. *Id.* at 1148.

The EPA’s proposed stay, as well as the stakeholder-suggested extension or provision of “phase-in” periods for the three requirements at issue, is consistent with the purposes of the CAA and, therefore, authorized under section 301(a) of the CAA. The EPA promulgated these requirements for purposes of achieving meaningful emission reductions under the regulatory schemes established in the 2016 Rule to complement other emission reduction efforts and address certain challenges (*e.g.*, technical infeasibility and time needed for building up for necessary equipment and trained personnel). For instance, the EPA promulgated both the fugitive emissions requirements and a process for applying and obtaining an alternative means of emissions limitations (AMEL) with the clear intent to achieve emission reductions from currently uncontrolled sources while still allowing sources subject to effective existing state fugitive emissions programs an avenue to continue implementing such programs, as well as to encourage the use of innovative technology. Therefore, in promulgating the fugitive emissions requirements, the EPA clearly intended and anticipated the implementation of alternatives in lieu of such requirements. However, stakeholders indicated that this purpose of the 2016 Rule was frustrated by the fact that the current AMEL provisions are not sufficiently clear to allow sources

to take advantage of them. Stakeholders suggested that further revision or clarification would be required before sources can apply and obtain approval to use an innovative technology or implement their current state program in lieu of the 2016 Rule requirements. The EPA received input from stakeholders stating that without staying the fugitive emissions requirements pending the EPA's reconsideration, the regulated entities would incur significant and potentially unnecessary additional costs and compliance burden to implement the 2016 Rule, and, in some cases, at the expense of disrupting or complicating compliance with applicable state programs, just to later revert back to what they were doing in the first place. These were the consequences that the EPA sought to avoid by promulgating the AMEL in the 2016 Rule. While not all states have fugitive emissions programs, considering that many states with high oil and gas production do have such programs in place,<sup>4</sup> it is not clear that the marginal additional emission reductions achieved during the EPA's reconsideration process outweigh the potential disruption to existing state programs and company-specific programs. In light of the discussion above, the EPA believes that the proposed stay of the fugitive emission requirements pending its reconsideration process is reasonable and authorized under sections 111 and 301 of the CAA.

With respect to the well site pneumatic pump requirements, the 2016 Rule acknowledges that routing the pneumatic pump emissions to an available onsite control or process may not always be technically feasible and, therefore, provides a technical infeasibility exemption for such routing except for pneumatic pumps located at a "greenfield site." However, some sources could not tell based on the 2016 Rule definition of "greenfield site," which was not proposed for notice and comment, whether they are "greenfield sites," even though they are encountering technical infeasibility, and, therefore, risk being in noncompliance. Delaying these requirements

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<sup>4</sup> Including California, Colorado, North Dakota, Ohio, Pennsylvania, Texas, Utah, and Wyoming.

until the EPA resolves this potential problem through its reconsideration process is consistent with the 2016 Rule to require emission reductions from well site pneumatic pumps only where it is technically feasible to do so.

Lastly, as mentioned above, the closed vent certification by professional engineer requirement is a compliance measure included in the 2016 Rule to provide additional assurance that sources are meeting the emission standards for a wide range of equipment, some of which have been in place since 2012. The EPA granted reconsideration of this requirement because the EPA had not considered its cost and whether the additional assurance justifies such expenditure. The EPA's proposed stay while conducting this evaluation is clearly consistent with section 111 of the CAA, which expressly identifies cost as a factor for consideration when promulgating emission standards. See CAA section 111(a)(1).

For the reasons stated above, both the proposed stay and the suggestion by stakeholders to extend (or provide) the phase-in periods are lawful exercises of the EPA's statutory authority and discretion under the CAA. The EPA solicits comment on the EPA's legal authorities for taking these actions. In addition, as mentioned above, the EPA solicits comment on stakeholder input<sup>5</sup> on the EPA's legal authorities to take these actions.

### **III. Stakeholder Input on Sources' Ability to Implement Requirements**

In the June 16, 2017, proposal, the EPA explained that it is proposing to stay the requirements at issue pending reconsideration due to its concern that sources should not be compelled to comply with these requirements pending the EPA's reconsideration of issues associated with these requirements, as these issues impact the ability of a wide range of sources to achieve and show compliance with their applicable standards. 82 FR 27646-8, June 16, 2017.

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<sup>5</sup> See, for example, Docket ID No. EPA-HQ-OAR-2010-0505-10577 and Docket ID No. EPA-HQ-OAR-2010-0505-12142.

In that action, the EPA proposed to amend the 2016 Rule by staying these requirements pending reconsideration.

Since proposing to stay the requirements pending reconsideration, the EPA received feedback from some stakeholders indicating that there are additional issues affecting sources' ability to implement the above mentioned requirements besides those for which the EPA has granted reconsideration.<sup>6</sup> Some stakeholders suggested that the EPA should amend the 2016 Rule by extending the "phase-in" periods provided in the 2016 Rule for a build-up of the number of trained personnel (*i.e.*, certified monitoring survey contractors, qualified professional engineers) and equipment (*i.e.*, monitoring instruments) required to meet the demand imposed by the fugitive emissions requirements and the well site pneumatic pump requirements. The EPA anticipated that during these periods, "sources will begin to phase in these requirements as additional devices and personnel become available." 81 FR 35859 and 35863, June 3, 2016. We solicit comment on the suggestion that these periods be extended.

Some stakeholders suggested that these concerns may also exist with respect to other provisions requiring professional engineer certifications. The EPA solicits comment on whether to similarly provide a phase-in period to allow a scale-up of the number of qualified professional engineers to meet the demand imposed by the 2016 Rule, which requires certification by such professionals of (1) the closed vent systems routing emissions from various equipment and (2) technical infeasibility of routing emissions from a well site pneumatic pump to an existing control device or process onsite. The EPA additionally solicits comment on the length of the phase-in period necessary in order to achieve this scale-up.

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<sup>6</sup> See, for example, Docket ID No. EPA-HQ-OAR-2010-0505-11108 and Docket ID No. EPA-HQ-OAR-2010-0505-12337.

As mentioned above, the EPA previously anticipated that some of these issues might be present for a more limited period and, therefore, provided in the 2016 Rule a “phase-in” period for both the fugitive emissions requirements and the pneumatic pump requirements. 81 FR 35851, 35858-9, 35863, June 3, 2016. Specifically, in regards to the fugitive emissions requirements, in light of the large number of sources, the EPA concluded that time was needed to allow an increase in production of the required equipment and scale-up of trained personnel, as well as for sources to establish the groundwork and secure the necessary monitoring equipment and personnel. The 2016 Rule, therefore, provided a “phase-in” period by allowing sources to conduct initial monitoring by June 3, 2017, or within 60 days after production starts, whichever is later. 81 FR 35858-9, 35863, June 3, 2016. Some stakeholders suggested that some sources continue to have difficulty securing the necessary equipment and/or personnel to conduct the required monitoring survey of fugitive emissions. For a similar reason, the 2016 Rule provided a phase-in period until November 30, 2016, to connect well site pneumatic pumps to an existing control or process onsite. 81 FR 35851, June 3, 2016.

However, some stakeholders suggested that the time provided in the 2016 Rule may not have been adequate to accommodate the number of affected sources subject to these requirements. In addition, some stakeholders indicated that sources that must now comply with these requirements upon startup may be particularly affected by these challenges. Therefore, the EPA solicits comment and information on these challenges that sources are experiencing in carrying out these requirements. Further, the EPA is soliciting comment on whether, in light of the numerous ongoing compliance issues, the EPA should amend the above mentioned phase-in periods in the 2016 Rule instead of simply staying the requirements. The EPA additionally is soliciting comment on the appropriate length of a phase-in period to address the challenges

sources are experiencing in carrying out the requirements in the 2016 Rule. A stay would mean that sources do not have to comply while the stay is in place. It would not, however, change any dates in the 2016 Rule. This could create some uncertainty for sources regarding their obligations upon expiration of the stay. A change to the phase-in periods (or the addition of such a period where the rule does not currently provide one) could provide greater certainty to sources.

Some stakeholders suggested that the challenges regarding acquiring necessary equipment and trained personnel may also exist with respect to the requirement of certification of closed vent systems by a professional engineer. We note that the 2016 Rule does not have a phase-in period associated with the closed vent system certification by professional engineer requirement, which must be met by a wide range of sources (*i.e.*, storage vessels, compressors, and pneumatic pumps), even though the EPA acknowledged that securing such professional engineer certification may take time. 81 FR 35851, June 3, 2016. The EPA, therefore, solicits comment on whether time (and how much) should be provided to allow a further building up of the number of professional engineers experienced in these requirements to meet the demand posed by this certification requirement.

As mentioned above, the EPA solicits comment on the appropriate length of time needed to address the challenges sources are experiencing in carrying out these requirements in the 2016 Rule and the suggestion to extend the “phase-in” periods established in the 2016 Rule for the fugitive emissions requirements and the well site pneumatic pump requirements, as well as the suggestion to provide a phase-in period for the requirement for certification of closed vent systems by a professional engineer.

#### *A. Fugitive Emissions Requirements*

The EPA proposed to stay for 2 years the fugitive emissions requirements at well sites and compressor stations while it reconsiders the process and criteria for requesting and receiving approval for the use of an AMEL and the applicability of the fugitive emissions requirements to low production well sites. 82 FR 27646, June 16, 2017. These issues determine the universe of sources that must implement the fugitive emissions requirements. *Id.* The EPA has received feedback from some stakeholders that securing certified monitoring survey contractors and monitoring instruments has been more difficult than predicted, and, therefore, the EPA is soliciting comment on the availability of contractors and monitoring instruments, and the impact on owners and operators complying with the requirements of the 2016 Rule. The EPA is soliciting comment on extending the phase-in period and the appropriate length of the phase-in period to allow for an adequate build-up of the personnel and equipment required for meeting the fugitive emissions requirements. Specifically, the EPA solicits comment on whether the impact of this requirement and any feasibility issues are relevant to few sources or a systemic issue related to many sources.

The EPA also received feedback regarding the applicability of the fugitive emissions requirements to third-party equipment at well sites which is ancillary to production (*e.g.*, equipment such as meters owned by midstream operators). The 2016 Rule requires that all fugitive emissions components at a well site be monitored and repaired, but there has been confusion as to the appropriate scope of components that are included in the definition of the well site for the fugitive emissions requirements. During the public comment period on the 2016 Rule, the EPA received feedback that ancillary midstream assets (*e.g.*, meters) should be excluded from the fugitive emissions requirements because they are owned by legally distinct

companies from the well site owner and operator and could have limited emissions.<sup>7</sup> The EPA's response to this comment was to state in its Response to Comments that "the resolution for any leaking components identified during surveys can be managed by the operator through cooperative agreements with other potential owners at the site."<sup>8</sup> The EPA has since received feedback that there are complicated site configurations and contractual arrangements that the EPA did not consider in the 2016 Rule that could prevent compliance, including situations where the third-party equipment could be made subject to the 2016 Rule based on actions made by another operator.<sup>9</sup> The EPA is soliciting comment on this feedback, specifically, legal and logistical issues that could prevent midstream operators, or other operators of ancillary third-party equipment, from compliance with the 2016 Rule, and suggestions for addressing this issue. The EPA additionally solicits comment on the number of contracts that would need to be renegotiated and associated burden. The EPA is further soliciting comment on whether, in light of the above, the EPA should stay or otherwise extend the phase-in period as it applies to third-party equipment on well sites until after the EPA has addressed this compliance issue.

The EPA additionally received feedback regarding technical, safety, and environmental issues associated with the delay of repair provisions in the 2016 Rule. The EPA proposed that if "repair or replacement [of a leaking fugitive emissions component] is technically infeasible or unsafe to repair during operation of the unit, the repair or replacement must be completed during the next scheduled shutdown or within 6 months, whichever is earlier." 80 FR 56668, September 18, 2015. Stakeholders responded with concerns about "delays lasting longer than six months due to availability of supplies needed to complete repairs and information regarding the

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<sup>7</sup> See Docket ID No. EPA-HQ-OAR-2010-0505-7237.

<sup>8</sup> See Docket ID No. EPA-HQ-OAR-2010-0505-7632, p. 4-282.

<sup>9</sup> See Docket ID No. EPA-HQ-OAR-2010-0505-12245 and Docket ID No. EPA-HQ-OAR-2017-0346-0328.

frequency of delayed repairs. Some commenters also indicated that in some cases, requiring prompt repairs could lead to more emissions than if repairs were able to be delayed, for example if a well shut-in or vent blow-down is required.” 81 FR 35858, June 3, 2016. In response to these comments, the EPA extended the time a component can be placed on delay of repair from 6 months to 2 years, and, in conjunction with this extension, added that “however, if an unscheduled or emergency vent blowdown, compressor station shutdown, well shutdown, or well shut-in occurs during the delay of repair period, the fugitive emissions components would need to be fixed at that time.” *Id.*

Since publication of the 2016 Rule, the EPA has received feedback that requiring repair or replacement of fugitive emissions components during unscheduled or emergency vent blowdowns could result in natural gas supply disruptions, safety concerns, and increased emissions.<sup>10</sup> In particular, stakeholder feedback suggests that compliance with this provision could result in prolonged shutdowns impacting natural gas supply if necessary parts and skilled labor is unavailable, and avoidable blowdowns resulting in greater emissions than the leaking component.<sup>11</sup> This feedback additionally indicates that these events may not necessarily result in the blowdown of all equipment located onsite and, thus, the equipment needing repair may not have been affected by the blowdown.<sup>12,13</sup> The EPA is soliciting comment on this feedback, specifically, the shutdown, shut-in, or blowdown scenarios that result in the technical, safety, and environmental issues described, and suggestions for addressing these issues. The EPA is further soliciting comment on whether, in light of the above, the EPA should stay or otherwise extend

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<sup>10</sup> See Docket ID No. EPA-HQ-OAR-2017-0346-0328 and Docket ID No. EPA-HQ-OAR-2010-0505-12245.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Blowdown refers to the release of entrained gas from equipment that causes a reduction in system pressure or a complete depressurization. For example, a blowdown may occur to reduce line pressure and discharge gas to ensure safe working conditions during maintenance and repair activities.

the phase-in period as it applies to equipment requiring delay of repair at well sites and compressor stations until after the EPA has addressed this compliance issue.

*B. Well Site Pneumatic Pump Requirements*

The EPA proposed to stay for 2 years the requirements for well site pneumatic pump standards while it reconsiders the technical infeasibility exemption and the definition of “greenfield site.” 82 FR 27647, June 16, 2017. The EPA acknowledges that the technical infeasibility exemption that the EPA finalized in the 2016 Rule adopted a different approach than previously applied to the oil and gas industry and created an unanticipated and unnoticed distinction between “greenfield” (new development) and “non-greenfield” sites. For a discussion on the technical infeasibility exemption provided in the 2016 Rule, please see 81 FR 35844-5, June 3, 2016. Some stakeholders have suggested that this distinction has caused confusion among owners and operators on what sites qualify for the technical infeasibility exemption. The EPA received stakeholder feedback that some owners and operators may have been unintentionally restricted in the design of new sites that, for technical reasons, could not employ controls or processes for certain pneumatic pump installations. The EPA is soliciting comment on technical constraints of new “greenfield” sites and specific site designs such as these which present challenges in implementing the well site pneumatic pump requirements in the 2016 Rule. The EPA is, therefore, soliciting comment on extending the phase-in period for 2 years, the time period the EPA estimates its reconsideration process and the issuance of the resulting rule would take, so that the EPA may provide the necessary clarification or revision in conjunction with its reconsideration process, thereby addressing all issues in one rulemaking. The EPA is also soliciting comment on extending the phase-in period and the appropriate length of the phase-in

period for the well site pneumatic pump requirements as an alternative to the proposed stay of these requirements.

*C. Professional Engineering Certification Requirements*

The EPA proposed to stay for 2 years the requirement for closed vent system certification by professional engineer while the EPA evaluates the benefits, as well as the cost and other compliance burden, associated with this requirement. 82 FR 27647, June 16, 2017. Such costs and associated burden are significant in light of the number of affected sources. Based on the EPA's estimates, approximately 16,000 affected sources (*i.e.*, pneumatic pumps, compressors, and storage vessels) came online between the proposed rule and the final 2016 Rule, not counting those that have and will come online since. The EPA received feedback that owners and operators had to reanalyze and potentially redesign the closed vent systems in order to meet this certification requirement. Subsequent to the proposed stay, the EPA received feedback from some stakeholders that owners and operators have struggled to obtain professional engineers to complete these certifications primarily because of a shortage of professional engineers certified in each state of operation with experience in the design of these systems. In light of this, the EPA is soliciting comment on the availability of professional engineers qualified in each state of operation and experienced in the oil and gas field and the costs associated with completing the certification requirements in the 2016 Rule. The EPA additionally solicits comment on the costs of reanalyzing and redesigning sites in order to comply with the requirements of the 2016 Rule. Lastly, in light of the challenges described above, the EPA is soliciting comment on providing a period to phase in this certification period as an alternative to staying this requirement. The EPA emphasizes that the proposed stay for this certification requirement would not affect sources' obligation to meet the underlying applicable emission standards during that time frame. As

explained above, this certification requirement is not an emission standard, but a compliance measure to provide additional assurance that the emission standards are being met.

#### **IV. Estimated Cost Savings, Forgone Benefits, and Net Benefits of the Proposed Stay**

Since the June 16, 2017, proposal, the EPA has updated the economic analysis presented in the proposed stay to include estimates of the forgone benefits associated with the proposed rule. In addition, the updated analysis reflects a revised time frame and corrects a technical error in the calculation of cost savings, resulting in a minor increase in cost savings associated with the proposed rule. The previous analysis assumed that the proposed 2-year stay would cover the time period from September 2017 through September 2019. As September has passed, the analysis has been updated to reflect a time frame beginning in January 2018 and ending in December 2019.

The present value of the updated cost savings of the proposed stay are \$270 million at a discount rate of 7 percent and \$280 million at a discount rate of 3 percent. The present value of the forgone climate benefits using the domestic social cost of methane estimates are \$11 million at 7 percent and \$37 million at 3 percent. The present value of net benefits is \$250 million at 7 percent, and \$240 million at 3 percent.

The equivalent annualized values of the cost savings are \$100 million per year when using a 7-percent discount rate and \$99 million per year using a 3-percent discount rate. The equivalent annualized values are the annualized present values, or the even flow of the present values, over the years affected by the proposal. The equivalent annualized value of the forgone climate benefits is \$4.3 million per year at 7 percent and \$13 million per year at 3 percent. The equivalent annualized value of net benefits is \$97 million per year at 7 percent, and \$86 million

per year at 3 percent. Please see the memorandum “Estimated Cost Savings and Forgone Benefits Associated with the Proposed Rule, Oil and Natural Gas: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements” available in Docket ID No. EPA-HQ-OAR-2010-0505 for details.

Dated: November 1, 2017.

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E. Scott Pruitt,  
Administrator.

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