

December 13, 2023

The Honorable Michael S. Regan
Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Administrator Regan,

I write to urge the Environmental Protection Agency (EPA) to reconsider its August 1, 2023 proposed rule titled Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems, more commonly known as “subpart W” of the Greenhouse Gas Reporting Program (GHGRP).¹

Section 60113 of the partisan Inflation Reduction Act (IRA) – euphemistically known as the “Methane Emissions Reduction Program” (MERP) – directed the EPA to impose and collect a tax on methane emitted by applicable natural gas and petroleum facilities that report to the GHGRP (40 CFR 98, subpart W). As part of establishing the MERP, the IRA ordered the EPA to revise its subpart W requirements to facilitate the reporting and calculation of the tax.

However, the EPA’s proposed subpart W revisions blatantly disregard and overstep even the partisan mandates of the statute as enacted and will excessively increase the tax burden on American energy under the new MERP. The proposal would not only radically expand the scope of emissions required to be reported by each facility under the GHGRP, but also unduly expand the number of facilities that are covered by subpart W and thus liable for the methane tax. If finalized as proposed, it is likely that the revisions would artificially overestimate US methane emissions. An overestimation or duplication of methane emissions would make it appear that domestic emissions are rising and that US methane emission intensity is higher than many international competitors, despite impartial international organizations showing that the opposite is true.²

At present, subpart W depends heavily on emission factors to calculate facilities’ emissions. While the EPA should continue to allow the option for facilities to use emission factors as a substitute for facility-specific data, the IRA required the EPA to revise subpart W to ensure reporting under the program accurately reflects emission totals. Under the proposed rule,

¹ Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems, 88 Fed. Reg. 50282 (Aug. 1, 2023). <https://www.federalregister.gov/documents/2023/08/01/2023-14338/greenhouse-gas-reporting-rule-revisions-and-confidentiality-determinations-for-petroleum-and-natural>

² IEA, Oil and gas methane emissions and methane intensity of production in selected countries, 2022, IEA, Paris <https://www.iea.org/data-and-statistics/charts/oil-and-gas-methane-emissions-and-methane-intensity-of-production-in-selected-countries-2022>, IEA. Licence: CC BY 4.0

emission factors are increasing dramatically without evidence that this accurately reflects emission totals. Additionally, the statute explicitly allows facilities to submit empirical emissions data to fulfill their responsibilities under the GHGRP and define their tax liability. Specifically, the IRA added Section 136(h) to the Clean Air Act, which states:

(h) REPORTING.—Not later than 2 years after the date of enactment of this section, the Administrator shall revise the requirements of subpart W of part 98 of title 40, Code of Federal Regulations, to ensure the reporting under such subpart, and calculation of charges under subsections (e) and (f) of this section are based on empirical data, including data collected pursuant to subsection (a)(4), accurately reflect the total methane emissions and waste emissions from the applicable facilities, and allow owners and operators of applicable facilities to submit empirical emissions data, in a manner to be prescribed by the Administrator to demonstrate the extent to which a charge under subsection (c) is owed.³

For the purposes of reporting, the EPA’s proposed subpart W revisions preclude facilities from measuring their methane emissions with advanced monitoring technologies and empirical methods, despite broad congressional direction that EPA “allow” facility owners the option of using “empirical” data to report their emissions.

The subpart W proposed revisions would also re-categorize centralized production facilities as non-production systems. Non-production systems have a much lower emission-intensity threshold under the rule, meaning this inappropriate categorization would inflate liabilities under the methane tax in a manner not directed by Congress.

The subpart W proposal and its likely impacts are emblematic of an apparent contradiction/paradox in the Administration’s policies. President Biden has repeatedly called on the oil and gas industry to increase production to support domestic demand and to benefit our allies abroad, all while pursuing policies that reduce production and processing.⁴ This proposal will arbitrarily increase the cost and burden of reporting under subpart W in service of growing the revenues generated by the MERP, which will result in making it more difficult and expensive to produce, transport and consume American energy. These costs will inevitably be passed on to American consumers already facing recent high inflation.

The EPA should immediately reconsider this proposal if it is going to finalize a rule that will provide regulatory certainty and reduce the significant economic burden that the agency and Administration are imposing on American families and energy consumers. The EPA must significantly revise the proposal to establish a pathway to allow every facility subject to reporting under subpart W the option of using demonstrated empirical methods to calculate their liability

³ Clean Air Act 42 U.S.C.A. § 7436(h) (For reference [Pub.L. 117-169, Title VI, § 60113](#), Aug. 16, 2022, 136 Stat. 2073.)

⁴ The White House, *Remarks by President Biden on Actions to Strengthen Energy Security and Lower Costs*, Oct. 19, 2023, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/10/19/remarks-by-president-biden-on-actions-to-strengthen-energy-security-and-lower-costs/#:~:text=My%20administration%20has%20not%20stopped,record%20oil%20production%20in%202023>

for the methane tax as an alternative to previous emission factors, without undue preference for a particular methodology. The Agency must also correct its discretionary re-categorization of centralized-production facilities and address the increasing inconsistencies between subpart W and other emission methodologies. Addressing these issues will require substantial changes or the full rescission of the proposal prior to a final rule. The current proposal, if finalized, will be an ill-advised regulatory policy with the perverse effect of also increasing a tax to be borne by energy producers, manufacturers, and consumers across the economy.

Sincerely,



Shelley Moore Capito
Ranking Member
Environment & Public Works Committee



Pete Ricketts
United States Senator



Markwayne Mullin
United States Senator



Kevin Cramer
United States Senator



Dan Sullivan
United States Senator