Via regulations.gov

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Office of Information and Regulatory Affairs
725 17th Street, N.W.
Washington, D.C. 20503

Re: Request for Information: Deregulation, 90 Fed. Reg. 15,481 (Apr. 11, 2025)

To Whom it May Concern:

GPA Midstream Association ("GPA Midstream") appreciates the opportunity to provide recommendations to the Office of Management and Budget ("OMB") of rules that should be rescinded or significantly revised.

GPA Midstream has served the U.S. energy industry since 1921 and represents more than 50 domestic corporate members that directly employ 57,000 employees engaged in the gathering, transporting, processing, treating, storage, and marketing of natural gas, natural gas liquids, crude oil and refined products, commonly referred to as "midstream activities." The work of our members indirectly creates or impacts an additional 400,000 jobs across the U.S. economy. In 2023, GPA Midstream members had an economic impact of $206.2 billion through operating more than 506,000 miles of gas gathering pipelines, gathering more than 91 billion cubic feet per day of natural gas, and operating more than 365 natural gas processing facilities that delivered pipeline quality gas into markets across a majority of the U.S. interstate and intrastate pipeline systems.

Introduction

GPA Midstream appreciates the White House's attention to unnecessary regulatory burdens on industry, particularly those that delay or discourage investments in energy infrastructure and domestic energy production. We look forward to working with the current Administration to help reduce unnecessary, costly, and unduly burdensome regulations and ensure rules that remain are reasonable, embrace common sense, and optimize costs and benefits.

Within that framework, GPA Midstream's highest priority regulations, that we request be a focus for this Administration, are:

- Environmental Protection Agency's ("EPA's") Methane Rules (Quad Ob and Quad Oc) governing the oil and natural gas sector. 89 Fed. Reg. 16,820 (Mar. 8, 2024), which should be revised to reduce unnecessary burdens and compliance costs as outlined in GPA Midstream's petition for reconsideration filed with US EPA;

- EPA's 2024 revisions to the Greenhouse Gas Reporting Rule for the oil and natural gas sector should be revised. 89 Fed. Reg. 42,062 (May 14, 2024);

- EPA's limitation on the ability to reclassify major sources as area sources should be rescinded. 89 Fed. Reg. 73,293 (Sept. 10, 2024);

- EPA's 2023 rule that improperly restricts state authority to formulate emission limitations governing existing sources should be rescinded. 88 Fed. Reg. 80,480 (Nov. 17, 2023);

- EPA's rules incorrectly eliminating long-standing and sensible affirmative defenses afforded sources for malfunctions, upsets, or emergencies should be rescinded. 89 Fed. Reg. 84,201 (Oct. 22, 2024) and 88 Fed. Reg. 47,029 (July 21, 2023);

- EPA's Clean Water Act Section 401 Water Quality Certification Improvement Rule should be rescinded. 88 Fed. Reg. 66,558 (Sept. 27, 2023); and

- Occupational Health and Safety Administration's ("OSHA's") Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings should be rescinded as it was proposed. 89 Fed. Reg. 70,698 (Aug. 30, 2024).

We focus our comments on these rules which, in whole or in part, present the greatest challenges to the midstream industry and interfere with our ability to maximize our operations, while providing no material benefit to the public, are legally deficient, and/or lacked support in the rulemaking record. For each, GPA Midstream provides only a brief summary. To provide greater detail, we attach for your consideration our prior comments on those regulations, as well as any petitions for reconsideration, and incorporate those by reference.

Collaborating with the current Administration in finalizing these rules, building off any existing regulatory record, will support the President's goal to unleash American energy.

Highest Priority Regulations

I. EPA, Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review ("Methane Rule"), 89 Fed. Reg. 16,820 (Mar. 8, 2024)

Aspects of the Methane Rule are overly complicated and burdensome. With some aspects, there is little to no real environmental benefit, and there is a disincentive to utilize innovative alternative technology applications. The litigation challenging the Methane Rule is now in abeyance and the Rule is back before EPA, who should act quickly to ensure the final regulation is legally durable and technically feasible. For the midstream industry, as detailed in GPA Midstream's reconsideration petition, priority items within the Methane Rule that should be corrected are:

- The regulation's net heating value compliance and continuous monitoring requirements at 40 C.F.R. §§ 60.5412b and 60.5417b are unworkable and impractical. EPA proposed to reconsider certain aspects of these requirements, 90 Fed. Reg. 5,794 (Jan. 15, 2025), however, the proposal would still require the unnecessary and burdensome monitoring of vent gases with consistently high net heating values, improperly treat existing control devices as if they were new control devices, and impose additional burdens on air-assisted and steam-assisted flares when compared to unassisted flares. GPA Midstream is attaching its comments and petition for reconsideration on these issues, as well as a July 31, 2024 letter to EPA providing net heating value data, for ease of reference. *See* Attachments A, B and C.

- The Methane Rule requires owners and operators to replace all leaking valves with low-emission valves or low-emission valve packing even when a simple repair, such as tightening or grease packing, can stop the existing valves from leaking (the "Low E-Valve requirement"). 40 C.F.R. § 60.5400b. This mandate would needlessly require companies to discard thousands of perfectly functional valves annually, at a cost of, on average, $5,000 each. Not only is the Low E-Valve requirement needlessly wasteful, but EPA never included it in the Proposed or Supplemental Proposed rulemaking. Therefore, EPA never provided any record justification for the Low E-Valve requirement, prepared cost estimates, or sought public comment. GPA Midstream's petition for reconsideration discusses this issue in Attachment B.

- The Methane Rule imposed a numeric emission limitation of zero for closed vent systems. 40 C.F.R. § 5411b. Such an emission limit is impossible to meet because natural wear-and-tear will cause some minor leaks over time. Prior closed vent system regulations implemented a "no detectable emission" standard as a work practice, meaning that a facility needed to detect and repair any leaks to maintain compliance. Here, however, the mere existence of a leak, despite meeting all monitoring requirements, could be read as a violation of the Rule. GPA Midstream's comments and petition for reconsideration on this issue are included as Attachments A and B.

- The Methane Rule erroneously changed the definition of "modification," as applied to midstream storage vessels, in a way that contradicts the Clean Air Act's text and caused immediate compliance concerns. The regulation defined a "modification" to include any time that a storage tank merely receives "additional crude oil, condensate, intermediate hydrocarbons, or produced water throughput." 40 C.F.R. §§ 60.5365b(e)(3)(ii)(C), (D). Not only would a "modification" occur when the tank's owner or operator took no action – the tank merely received additional throughput from an unrelated upstream source – but such a "modification" can occur several times in a week, or even in a day. This contradicts the Clean Air Act's definition of "modification" at 42 U.S.C. § 7411(a)(4), requiring a "physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant…." EPA improperly claimed that a tank's passive reception of fluids is a

change in the method of operation, despite the fact that the tank is not operated any differently regardless of the amount of fluids received. Nor does EPA require an increase in emissions. Instead, the Methane Rule simply assumes increased emissions from normal operations. EPA provided no evidence in the rulemaking record to support this assumption.

GPA Midstream's comments and petition for reconsideration on this issue are included as Attachments A and B.

II. EPA, Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems, 89 Fed. Reg. 42,062 (May 14, 2024)

EPA should seek regulations that are reasonable, practicable, and provide the certainty necessary for America's oil and gas companies to feel confident in planning for energy-related capital expenditures. Regulatory certainty and a measurement-informed national greenhouse gas inventory program are important to GPA Midstream's members. The absence of a national reporting program would likely result in disparate state and voluntary programs, even potentially disadvantaging U.S. oil and gas companies in a global market. Numerous, inconsistent reporting programs would inadvertently lead to additional costs and burdens. GPA Midstream believes that Subpart W requires significant improvements, all of which are easily achievable and thoroughly detailed in these comments and past engagement with EPA.

Subpart W is a burdensome reporting rule that does not impart direct compliance obligations and collects an enormous amount of detailed equipment and facility data. It should be re-focused on collecting only measurement-informed emissions information instead of various qualitative information regarding equipment and facilities. Nor should Subpart W mandate equipment monitoring for abnormal operations. In order to balance compliance burdens with accuracy, Subpart W should be significantly simplified to concentrate on top emission sources and to provide reporters with the option to choose the use of emission factors or direct measurement, similar to the GTI Veritas Protocol.[1] Operators, if desired, should have the chance to utilize alternative leak detection technologies. By focusing on measurement-informed, emissions-only reporting, Subpart W can better adapt to new and alternative technologies and above-and-beyond voluntary measurements without multiple rule making efforts as technology rapidly evolves.

GPA Midstream believes that some provisions in the EPA's 2024 revisions to the Greenhouse Gas Reporting Rule moved the Subpart W program in the opposite direction. It raised several significant concerns with respect to the accuracy of data received and EPA's authority to collect it. These concerns could possibly be exacerbated by Congress' use of the Congressional Review Act to rescind EPA's regulation implementing the Waste Emission Charge – an interim

[1] GTI Energy's Methane Emissions Measurement + Verification Initiative. https://veritas.gti.energy/.

action we strongly support.[2] Several parties challenged the revisions in the D.C. Circuit and those challenges are currently in abeyance while EPA reviews multiple petitions for reconsideration, including a petition submitted by GPA Midstream. GPA Midstream has several suggestions for revisions. These are included in attachment D. We are also including a copy of our comments and petition for reconsideration of the Greenhouse Gas Reporting rule at attachments E and F to provide more details. However, below are summaries of major revisions that should be made to the GHG Reporting Rule:

- GPA Midstream is concerned the revised reporting rule requires companies to report inaccurate assumed "emissions" with no real-world basis. Examples of this problem include:

    - Requiring companies to report leaks discovered during leak surveys but prohibiting them from accounting for leak repairs required by the same EPA regulations. Instead, the Subpart W revisions require reporters to use an "undetected leak factor" that assumes leaks were never repaired, despite both a regulatory requirement to make repairs and documentation that the repairs were actually made.

    - Assuming a flare destruction removal efficiency ("DRE") of 92%. This assumption lacks any real-world basis, is inadequately supported, and artificially inflates emissions. The prior default DRE of 98% was supported by decades of EPA's own research, other scientific evidence, and destruction efficiency requirements found in other rules and facility permits. EPA ignored this evidence in favor of a single limited study using less reliable remote sensing technology.

    - Double-counting combustion emissions during Other Large Release Events.

    - Assuming a methane content of 70-90% for crankcase methane emissions even though studies demonstrate that dilution reduces concentrations to approximately 3.5%.

- EPA failed to provide adequate safeguards for excluding Super-Emitter Program notifications that contain demonstrable errors, cover multiple emission sources, or where one facility receives multiple notifications for the same event.
- EPA should consider a new tier 1 option allowing for measurement-informed emissions reporting from alternative detection technology.

[2] We also urge the White House to work with Congress to repeal the statutory authorization for the Waste Emission Charge in Section 136 of the Clean Air Act. Without the regulation, there is no mechanism for EPA to assess the charge. However, to remove any remaining uncertainty, the statutory provision should likewise be repealed.

III. EPA, Reclassification of Major Sources as Area Sources Under CAA § 112 ("Reclassification Rule"), 89 Fed. Reg. 73,293 (Sept. 10, 2024)

EPA should rescind the Reclassification Rule. Historically, EPA followed a 1995 agency guidance that provided that once a source was a major source of hazardous air pollutants (HAPs), it was always a major source. This "Once-In Always In" policy was revoked during the first Trump administration by a 2020 regulation, Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act, 85 Fed. Reg. 73,854 (Nov. 19, 2020) (referred to as the "Major MACT to Area Rule" or "MM2A Rule"). The 2020 MM2A Rule correctly allowed a major source to reclassify as an area source at any time, so long as it met the emissions requirements to qualify as an area source. By rescinding the MM2A Rule, the Reclassification Rule effectively resurrected the Once-In, Always-In policy imposed. This has drawn significant criticism from Congress with the Senate passing S.J. Res. 31 to rescind the rule under the CRA, by a 52 to 46 margin on May 1, 2025. As of the date of these comments, the House has not yet taken up this rule.

As explained in GPA Midstream's comments, *see* Attachments G (September 24, 2019) and H (November 13, 2023), the Reclassification Rule and Once-In, Always-In approach to the National Emission Standards for Hazardous Air Pollutant ("NESHAP") program is contrary to the Clean Air Act's text, lacks any record basis for its assumptions, imposes unnecessary compliance costs, discourages the use of more efficient and lower polluting equipment, and lacks any measurable environmental benefits. More specifically, GPA Midstream asserts that:

- The Reclassification Rule continues to treat a reclassified "Area Source" as a "Major Source" even when the source no longer meets the statutory definition of a "Major Source." Where a source no longer emits more than 10 tons per year of a single hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants, the statute deprives EPA of the authority to regulate that source as a "Major Source." *See* 42 U.S.C. §§ 7412(a)(1), (a)(2) (definitions of "Major Source" and "Area Source"); *id.* § 7412(d) (emission standards for Major Sources and Area Sources). Yet, the Reclassification Rule unlawfully regulates Area Sources under the wrong emission standards even though they no longer meet the statutory definition of "Major Source."

- EPA continues to regulate Area Sources as Major Sources due to a belief that reclassified Area Sources could hypothetically increase emissions up to maximum level allowed for area sources for any single HAP (9.9 tons per year). EPA provided no evidence that any reclassified source has ever done this and, even if it had, the reclassified source would still meet the statutory definition of an "Area Source." EPA, in the record for the 2020 regulation, examined this issue in detail, finding that only 3% of reclassified sources were physically capable (as a matter of emission control operations) of increasing their emissions yet they were prohibited from doing

so under their operating permits. Nevertheless, just four years later, EPA completely disregarded its own findings.

- The Reclassification Rule adopted a definition of "controls" as only being considered effective for purposes of calculating a source's potential to emit if they are "federally enforceable," regardless of whether they are demonstrably effective at reducing emissions. As explained in GPA Midstream's comments, such an interpretation is not only unsupported by Section 112, but the D.C. Circuit already rejected that interpretation in *National Mining Association v. U.S. EPA*, 59 F.3d 1351, 1363 (D.C. Cir. 1995).

In short, GPA Midstream believes that EPA should reinstate the 2020 MM2A regulation, which correctly interpreted Section 112's definitions of "Area Source" and "Major Source" while taking a defensible approach to what controls must be considered in calculating a source's potential to emit.

IV. EPA, Adoption and Submittal of State Plans for Designated Facilities: Implementing Regulations Under Clean Air Act Section 111(d), 88 Fed. Reg. 80,480 (Nov. 17, 2023)

EPA recently amended 40 C.F.R., Part 60, Subpart Ba to dramatically and unlawfully reduce the flexibility that Congress afforded States under Section 111(d). Subpart Ba governs how States establish performance standards for existing emission sources. Under Section 111(d), the EPA Administrator issues regulations establishing procedures for States to "establish[ ] standards of performance for any existing source." 42 U.S.C. § 7411(d)(1). Those procedures "*shall* permit the State in applying a standard of performance to any particular source … to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies." *Id.* Despite the very broad authority Congress provided to States ("among other factors"), particularly with consideration of an existing source's remaining useful life (called "RULOF") in establishing performance standards, the revised Subpart Ba regulation strips virtually all discretion from States.

The Subpart Ba regulations establish what EPA calls "threshold requirements" that States must satisfy before they may consider RULOF. In fact, these threshold requirements improperly preclude States from fully considering RULOF or "other factors" despite the clear statutory authorization for them to do so. Under the rule, States may only deviate from EPA-imposed guidelines by documenting instances of "technical infeasibility" or when "fundamental differences between the information specific to a facility (or class of facilities) and the information EPA considered in determining the degree of emission limitation achievable" make it "unreasonable for that facility" to comply with EPA's guidelines. 40 C.F.R. § 60.24a(f). *If* a State can make this showing to EPA's satisfaction (meaning, EPA's sole discretion), then the State may use an alternative performance standard "no less stringent … than is necessary to address the fundamental differences" but the State "must evaluate the system of emission reduction" established by EPA

and "evaluat[e] metrics EPA considered in assessing those systems" as a condition. *Id.* § 60.24a(f)(1). Overall, States are heavily burdened to prove, to EPA's satisfaction, that any deviation from EPA-imposed guidelines are "necessary" and justified by "infeasibility" and "unreasonableness" and, even if they meet this burden, are subsequently restricted in what information they consider in setting their own standards.

These threshold requirements go far beyond the procedural regulations authorized by Section 111(d)(1) and are not the "best reading" of the statute under *Loper Bright* as they contradict the Clean Air Act's text as well as a recent D.C. Circuit decision explaining EPA's role under Section 111(d). EPA's regulations governing State plans "shall permit" States to consider RULOF and "other factors." 42 U.S.C. § 7411(d). The statute does not say that EPA "may permit" the States to exercise such discretion *if* they meet various threshold criteria to EPA's satisfaction. In fact, nothing in the statute authorizes EPA to act as a gatekeeper, much less impose such onerous regulations that States have little choice but to endorse EPA's own emission guidelines.

Instead, once EPA creates emission guidelines for existing sources, "the Clean Air Act *leaves it to the States* to set their own standards of performance for their existing pollution sources." *Amer. Lung Ass'n v. EPA*, 985 F.3d 914, 962 (D.C. Cir. 2021) (emphasis added). "The cooperative-federalism design of Section 7411(d) gives the States," not EPA, "broad discretion in achieving those limitations." *Id.* "[U]nder Section 7411(d), the EPA does not impose the 'best system of emission reduction' on anyone. Instead, each State decides for itself what measures to employ to meet the emission limits, and in so doing may elect to consider the 'remaining useful life' of its plants and 'other factors.'" *Id.* Thus, EPA's claim that it has the authority to "substantively review states' standards of performance" and reject them if not "satisfactory," 88 Fed. Reg. 80,522 (Nov. 17, 2023), defies both the Clean Air Act and settled case law.

The Subpart Ba regulations should be rescinded and replaced with regulations that impose only process-driven regulations on the States. This is all Section 111(d)(1) authorizes EPA to do: "prescribe regulations which shall establish a procedure similar to that provided by Section 7410 of this title." 42 U.S.C. § 7411(d)(1). Section 7410 only allows EPA to disapprove a State Implementation Plan if it fails to comply with Section 7410(k)(1)(A). Nothing in either Section 7410 or 7411 allow EPA to create new standards for States to meet, or restrictions on how States exercise their discretion.

V. EPA, Removal of Affirmative Defense Provisions from National Emission Standards for Hazardous Air Pollutants and Operating Permit Programs, 89 Fed. Reg. 84,201 (Oct. 22, 2024) and 88 Fed. Reg. 47,029 (July 21, 2023)

During the prior four years, EPA removed affirmative defense provisions for startups, shutdowns, and equipment malfunctions from several regulations, two of which directly pertain to GPA Midstream's members. *See* Removal of Affirmative Defense Provisions From the National Emission Standards for Hazardous Air Pollutants for the Oil and Natural Gas Production Facility

and Natural Gas Transmission and Storage Facility Source Categories, 89 Fed. Reg. 84,291 (Oct. 22, 2024); Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and Federal Operating Permit Program, 88 Fed. Reg. 47,029 (July 21, 2023). The regulations in question allowed for affirmative defenses to liability when a source violated emission standards due to unavoidable air pollution control malfunctions, upsets, or emergencies. *See* 40 C.F.R. §§ 70.6(g) (2021) (affirmative defense "to an action brought for noncompliance with such technology-based emission limitations" due to emergency or upset); 63.762 (2021) ("affirmative defense to a claim for civil penalties" for violating Subpart HH due to malfunction); 1272 (2021) (same for Subpart HHH). As EPA recognized, these affirmative defenses have long provided "some flexibility, recognizing that there is a tension, inherent in many types of air regulations, to ensure adequate compliance while simultaneously recognizing that despite the most diligent of efforts, emission standards may be violated under circumstances entirely beyond the control of the source." 89 Fed. Reg. 84,291, 84,292-93 (Oct. 22, 2024).

However, EPA removed these provisions based on its flawed interpretation of *NRDC v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014), arguing that it compelled the removal of these affirmative defenses and even prohibited EPA from considering affirmative defenses in its own administrative enforcement actions. As GPA Midstream explained in its comments on the proposed rules, the *NRDC* decision does not support EPA's views. The *NRDC* case addressed 40 C.F.R. § 63.144, establishing an affirmative defense that reduced the amount of civil penalties assessed only after a defendant was found liable. *See* 75 Fed. Reg. 54,970, 55,033 (Sept. 9, 2010) ("Appropriate penalties may be assessed … if the respondent fails to meet its burden of proving all of the requirements in the affirmative defense"). The *NRDC* court held that an affirmative defense to penalties *after liability is established* contradicts Clean Air Act Sections 113(e) and 304(a) which provide judges with the authority to determine civil penalty amounts, not EPA. 749 F.3d at 1063.

By contrast, the affirmative defenses for Section 70.6 and Subparts HH and HHH were defenses to *liability*, meaning that they are unaffected by the *NRDC* decision or its reasoning. Several courts have explained the distinctions between affirmative defenses to liability and affirmative defenses to penalties. *See*, *e.g.*, *Sender v. Mann*, 423 F. Supp. 2d 1155, 1163 (D. Colo. 2006) ("An affirmative defense is a basis for denying liability"); *United States v. Cinergy Corp.*, 397 F. Supp. 2d 1025, (S.D. Ind. 2005) (statute of limitations is an affirmative defense to the remedy of civil penalties, not liability when the United States is a plaintiff); *compare* CERCLA § 107(b) (affirmative defense to liability) *with* CERCLA § 107(a)(4)(A) (any person liable under CERCLA may assert an affirmative defense that response costs are not recoverable). Affirmative defenses to liability do not implicate Clean Air Act Sections 113(e) and 304(a), which only involve civil penalties after liability is established.

Despite this well-established distinction between types of affirmative defenses, EPA summarily dismissed this point, even quoting the regulatory language referencing "an affirmative defense to *a claim* for civil penalties" – meaning an action seeking to establish liability – and

conflating it with an affirmative defense to reduce civil penalty amounts after liability is established (the type of affirmative defense prohibited under *NRDC*). 89 Fed. Reg. at 84,294 (quoting former 40 C.F.R. §§ 63.762(d), 1272(d)). EPA's view is clearly wrong as a matter of law because it reads the words "a claim for" out of the regulation and wrongly reads the phrase as saying only, "an affirmative defense to … civil penalties."[3] An affirmative defense to liability does not intrude on a judge's ability to set appropriate civil penalties in civil actions and the affirmative defenses to liability should be re-instated.

Further, there can be no disputing that *NRDC* has no bearing on EPA's ability to recognize affirmative defenses in administrative actions as Sections 113(e) and 304(a) reference only civil actions. In fact, EPA admitted this in its final rule. 89 Fed. Reg. at 84,293, n. 3. Nevertheless, EPA prohibited use of the affirmative defenses in administrative procedures because it "is not necessary" and because "assessment of penalties for violations caused by malfunctions in administrative proceedings and judicial proceedings should be consistent." *Id.* As for the former claim – lack of necessity – this is contradicted by EPA's admission that such affirmative defenses are important because "despite the most diligent of efforts, emission standards may be violated under circumstances entirely beyond the control of the source." *Id.* at 84,292-93; *see also Essex Chem. Corp. v. Ruckelshaus*, 486 F.2d 427, 433 (D.C. Cir. 1973) (provisions for equipment malfunctions are "necessary to preserve the reasonableness of the standards as a whole"). And, as for the latter, EPA provides no explanation as to why consistency is required given that the Clean Air Act treats civil proceedings and administrative proceedings differently. Congress was clearly aware of administrative proceedings, setting out an entire scheme for "Administrative Assessment of Civil Penalties" as determined by "the Administrator," 42 U.S.C. § 7412(d), not judges in civil actions. Therefore, EPA has failed to establish any basis for asserting that civil and administrative proceedings "should be consistent" despite clear and relevant differences in the statute.

VI. EPA, Clean Water Act Section 401 Water Quality Certification Improvement Rule, 88 Fed. Reg. 66,558 (Sept. 27, 2023).

The misnamed "401 Water Quality Certification Improvement Rule" ("2023 Rule") gutted the Section 401 Certification Rule, 85 Fed. Reg. 42,210 (July 13, 2020), the latter providing a long-overdue update to Section 401 regulations in order to stop a pattern of abuse by a handful of states that misused those regulations to unilaterally veto federally-approved interstate energy infrastructure projects. The President is well aware of these abuses as he continues to negotiate with the State of New York over resurrecting the Constitution Pipeline, a necessary infrastructure pipeline that the State blocked by denying a Section 401 water quality certification for openly

[3] EPA also claimed that *NRDC* compelled it to prohibit affirmative defense provisions in operating permit programs within State Implementation Plans despite *NRDC* explicitly stating that it did "not here confront the question whether an affirmative defense may be appropriate in a State Implementation Plan." 749 F.3d at 1064, n. 2.

political reasons. The 2023 Rule, however, gave States much more leeway to abuse their certification authority by adopting untenable views of State authority under Section 401 and a key Supreme Court case interpreting Sections 401(a) and (d), particularly its interpretation of "activity as a whole" that allows States to block a project for reasons unrelated to water quality. The 2023 Rule should be rescinded and replaced with a rule more similar to the 2020 Rule.

VII. Occupational Health and Safety Administration, Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings, 89 Fed. Reg. 70,698 (Aug. 30, 2024).

This rule, as proposed, creates a highly complicated, one-size-fits-all approach imposing onerous restrictions on employees exposed to a heat index of 80° F for more than 15 minutes in any given 60-minute period. It establishes elaborate training, planning, and supervision requirements that particularly burden companies in the midstream industry without any anticipated benefit for workers. GPA Midstream members already have heat awareness and prevention programs in place, and this standard adds requirements that would impede American energy development and transportation without a tangible benefit.

Other Agency Actions that Should be Rescinded, Withdrawn, or Revised

Beyond these top regulations, the following final rules likewise should be rescinded and other agency actions withdrawn as the rules/proposed rules/agency reports or guidance lack a sound legal foundation, would impose costs that outweigh asserted benefits, and lack a factual basis demonstrating agency action was necessary or appropriate.

Final Rulemakings

EPA, Accidental Release Prevention Requirements: Risk Management Program Under the Clean Air Act; Safer Communities by Chemical Accident Prevention, 89 Fed. Reg. 17,622 (Mar. 11, 2024). EPA significantly revised the 2019 Risk Management Plan but failed to indicate how the 2019 rule was deficient in any way. In fact, almost no aspect of the 2024 revisions had a rational basis or grounding in a factual record. Some aspects of the rule, such as the backup power requirements, exceeded EPA's statutory authority, while others compelled the disclosure of sensitive facility safety information. These regulations were challenged by other industry groups on several other grounds as well, such as the unlawful Safer Technologies Alternatives Analysis. Thus, there are no shortage of reasons for rescinding this rule.

EPA, Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, 89 Fed. Reg. 16,202 (Mar. 6, 2024). After a thorough review of the fine particulate matter ("$PM_{2.5}$") National Ambient Air Quality Standard ("NAAQS") in 2020, EPA rushed through an unprecedented, unnecessary, and untimely rulemaking, ahead of the standard five-year review period, to cut the NAAQS from 12.0 $\mu g/m^3$ to 8.0 $\mu g/m^3$. The final rule ignored the substantial reductions in $PM_{2.5}$ emissions over the preceding several years and demanded further emission reductions that are increasingly difficult and costly. Further, in some areas of the country, the new

$PM_{2.5}$ NAAQS is below background levels. This has presented significant challenges for industry. EPA should re-instate the 2020 $PM_{2.5}$ standard.

EPA, National Emission Standards for Hazardous Air Pollutants; Reciprocating Internal Combustion Engines and New Source Performance Standards: Internal Combustion Engines; Electronic Reporting, 89 Fed. Reg. 70,505 (Aug. 30, 2024). EPA's amendments to the New Source Performance Standards for Stationary Compression Ignition Internal Combustion Engines and Stationary Spark Ignition Internal Combustion Engines (40 C.F.R., Part 60, Subparts IIII and JJJJ) and National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines (40 C.F.R., Part 63, Subpart ZZZZ) now require that annual and semi-annual compliance reports be submitted through EPA's Central Data Exchange using the Compliance and Emissions Data Reporting Interface ("CEDRI"). There is currently no tool for automatically importing data into CEDRI's Electronic Reporting Tool, which cannot accept FTIR data. Instead, reporters must manually convert data into a format that CEDRI can accept. Given the high volume of engine tests that operators must process, this is a significant burden.

Proposed Rulemakings

EPA, PSD/NNSR: Regulations Related to Project Emissions Accounting. This proposal would change the way that emissions increases would be calculated for existing major stationary sources in order to artificially inflate emissions and unlawfully impose permitting obligations on those sources that are not required under current regulations. More specifically, when a project at a stationary source would cause both emission increases and decreases, the proposal would impose an arduous netting process that counts the increases and ignores the decreases, inaccurately finding that the project results in a net emissions increase. The proposal was aimed at a theoretical possibility that sources would double-count emission decreases across multiple projects, but EPA presented no evidence of this happening in the real world.

EPA, Prevention of Significant Deterioration and Nonattainment New Source Review: Reconsideration of Fugitive Emissions Rule, 87 Fed. Reg. 62,322 (Oct. 14, 2022). EPA proposed to reconsider the final rule titled, "Prevention of Significant Deterioration and Nonattainment New Source Review: Reconsideration of Inclusion of Fugitive Emissions, 73 Fed. Reg. 77,882 (Dec. 19, 2008). More specifically, EPA proposed to require consideration of fugitive air pollutant emissions from stationary sources when considering applicability for permitting requirements under the Clean Air Act. GPA Midstream strongly opposes the proposal as it misreads the Clean Air Act's text, is based on a misunderstanding of how the requirements would operate in the real world and lack a record basis. EPA should withdraw the proposal as soon as possible.

EPA, Revisions to the Air Emissions Reporting Requirements, 88 Fed. Reg. 54,118 (Aug. 9, 2023). EPA proposed "risk-based reporting thresholds" for hazardous air pollutants based on flawed "Unit Risk Estimates" and reference concentrations. EPA calculated these thresholds based

on assumptions about public exposure to hazardous air pollutants that were grossly unrealistic, not unsupported by the record, and contradicted EPA guidance. As a result, the reporting thresholds were so low that far more midstream facilities would be covered by the rule than EPA anticipated. Further, EPA relied on outdated emissions inventory data despite acknowledging that more recent data was publicly available. EPA should withdraw this proposal as, if it was finalized, it would impose significant new burdens on the midstream industry without any benefit to the public.

EPA, Review of New Source Performance Standards for Stationary Combustion Turbines and Stationary Gas Turbines, 89 Fed. Reg. 101,306 (Dec. 13, 2024). EPA should formally withdraw this proposed rule if, for no other reason, than EPA's refusal to provide proposed regulatory text significantly hindered the public's ability to provide intelligent commentary. Among the concerns with the rule, just evident from the preamble language, is that EPA proposed a definition of "reconstruction" that is inconsistent with the Clean Air Act's definition and requires nitrogen oxide controls for a broad range of turbines when the record demonstrates that such controls are only cost effective for the largest turbines with high utilization rates and certain exhaust temperature ranges. Even with such controls, the record shows that a significant number of turbines will fail to meet the proposed nitrogen oxide emission standard.

Securities and Exchange Commission, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 89 Fed. Reg. 21,668 (Mar. 28, 2024). In March 2024, the Securities and Exchange Commission ("SEC") promulgated a sprawling and onerous set of public disclosure requirements that exceeded the SEC's statutory authority, violated the Administrative Procedure Act, and encroached on the First Amendment. The rule is currently stayed pending litigation and the SEC recently voted to decline to defend the rule in court. Clearly, the rule is ripe for rescission with the SEC returning to the Congressionally authorized financial materiality standard for investor disclosures.

U.S. Fish & Wildlife Service, Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Monarch Butterfly and Designation of Critical Habitat, 89 Fed. Reg. 100,662 (Dec. 12, 2024). This proposed rule should be officially withdrawn. Although Monarch Butterfly populations have fluctuated over recent years, the Fish & Wildlife Service's rationale for listing the butterfly dismisses evidence of population increases, as noted by peer reviewers. At best, the Fish & Wildlife Service should wait until population data actually supports a proposal to list the Monarch Butterfly as threatened.

Other Agency Actions

Department of Energy, 2024 LNG Export Study: Energy, Economic, and Environmental Assessment of U.S. LNG Exports, 89 Fed. Reg. 104,132 (Dec. 20, 2024). The Department of Energy released a December 2024 study that claimed, without any valid basis, that increased LNG exports would significantly increase the domestic cost of natural gas, electricity, and manufactured goods while also erroneously claiming that LNG exports result in a net increase of GHG emissions.

Nothing in the study supports these conclusions, which have been heavily criticized by industry. However, this report continues to represent the Department of Energy's official position as it has not been formally rescinded or replaced. The Department of Energy should do so without further delay and conduct a new study on the public interest in continuing LNG exports.

Pipeline and Hazardous Materials and Safety Administration ("PHMSA"), Property Damage Threshold for Accident Reporting, 49 C.F.R. § 195.50(e). The property damage threshold for reporting hazardous liquid pipeline accidents should be aligned with the reporting requirements for natural gas operators. PHMSA's current regulations require an accident report where a release of hazardous liquid or carbon dioxide results in several listed consequences including "estimated property damage exceeding $50,000, 49 C.F.R. § 195.50(e); the natural gas operator threshold is $145,400, almost three times larger. 49 C.F.R. § 191.3. The $50,000 threshold is over 30 years old and severely outdated. *See* 59 Fed. Reg. 33,388 (June 28, 1994). While PHMSA increased the natural gas incident reporting threshold in 2021 and agreed to re-evaluate that figure each year based on inflation, the reporting threshold for hazardous liquid operators remains at $50,000. Maintaining the low reporting threshold promotes inconsistency and confusion while creating unnecessary burdens on hazardous liquid operators with little public benefit.

PHMSA, Integrity Management Repair Criteria, 49 C.F.R. §§ 195.450, 452. The Integrity Management ("IM") repair criteria for hazardous liquid pipelines, in place since 2000, 65 Fed. Reg. 75,378 (Dec. 1, 2000), needs to be updated. While the IM Program has succeeded at reducing pipeline releases near people and sensitive environments, it has not kept pace with advancements in assessment technology, methods for analyzing potential pipeline defects and learning from research and past releases. The outmoded IM criteria require operators to repair defects, or even suspected defects, that are not harmful, needlessly diverting operator resources toward unnecessary repairs. Modernization is required in these key areas:

- **Seam Corrosion**: The criteria for corrosion that may be near the longitudinal weld seam on pipe is poorly worded, unworkable, and PHMSA has interpreted them to require repairs of clearly non-injurious corrosion. This criteria should be updated to focus on potentially injurious corrosion threats, such as seam types susceptible to corrosion.

- **Dents**: Operators should be able to use engineering analyses under "*Assessment and Management of Dents in Pipelines"* (API RP 1183) or other engineering critical assessment methods to determine if dents require repair.[4]

- **Cracks**: Operators should be permitted to address injurious cracks through the procedures and methods allowed in *"Crack ILI Response: Maximum Depth and Failure Pressure Ratio*" (API TR 1190) and "*Recommended Practice for Assessment and Management of Cracking in*

[4] https://www.apiwebstore.org/standards/1183

Pipelines (API RP 1176).[5][6] This would replace the existing regulatory crack criteria that is poorly worded and difficult to implement.

- **Repair Timeframes**: Streamline the various repair timeframes for defects by replacing 60 and 180-day conditions with 270-day and 365-day conditions.

- **Assessment Timeframes**: The maximum assessment interval for hazardous liquids pipelines should be consistent with long-accepted assessment intervals for gas transmission pipelines and streamlined to allow for longer timeframes if justified by engineering analyses.

- **Advanced Analytical Tools**: Analyses of predicted failure pressure and critical strain levels should guide operator decisions. Gas pipeline operators are already permitted to deploy these engineering assessment tools, and liquid operators should be permitted to do so as well.

- **Expand Risk-Based IM**: In lieu of specific repair criteria, operators should be given the option to adopt data driven, performance-based IM programs and use technology to make risk-based decisions on inspection frequency and repair schedules.

GPA Midstream is prepared to work with PHMSA to develop specific language to implement the changes summarized above.

PHMSA, **Gas Reporting Requirements, 49 C.F.R. § 191.5.** PHMSA should change the definition of "incident" used for reporting purposes to increase the threshold from "unintentional estimated gas loss of three million cubic feet or more," 49 C.F.R. § 191.3. Doing so would save time, and the resources associated with reporting the incident. Reports should also move to a 30-day written requirement rather than an immediate telephonic requirement if the incident report is based solely on an estimate of lost gas. This would reserve National Response Center calls for more significant incidents such as those involving injury or death.

PHMSA, Gas In-Plant Piping, 49 C.F.R., Part 192. PHMSA should formally revise its jurisdictional framework for gas in-plant piping under Part 192 to mirror the framework for hazardous liquids in-plant piping and low-stress transfer lines under Part 195. Gas piping within plants should be exempted under Part 192 as it is not "transportation of gas." This would be consistent with PHMSA's series of informal, case-by-case regulatory interpretations that borrow from Part 195's in-plant piping concepts, and reduce uncertainty due to inconsistent interpretations, regulatory burdens, and confusion. Further, Part 192 should be aligned with Part 195 with respect to points of demarcation, classify piping as in-plant piping even where there is no connection to a PHMSA-regulated pipeline, allowing piping to cross public roads or railways without losing its in-plant status, designate pipelines that leave plant grounds and are less than a

[5] https://www.apiwebstore.org/standards/1190
[6] https://www.apiwebstore.org/standards/1176

mile long as unregulated, and base the in-plant piping designation on function instead of ownership or commercial arrangements.

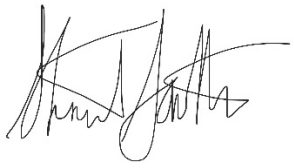
PHMSA, Emergency Response, 49 C.F.R. § 192.615. PHMSA should refine the definition of "emergency" to reduce the number of post-incident reviews required by 49 C.F.R. § 192.615(b)(3).

EPA, Social Cost of Carbon. GPA Midstream was pleased to learn that EPA is "revisiting" the Social Cost of Carbon ("SCC") "which contributes to significant regulatory costs."[7] The SCC's defects are well known in that, among other things, it uses arbitrary and unknowable model inputs to create an unverifiable set of "costs" used to artificially inflate the benefits of otherwise unjustifiable regulations. Further, the SCC relies on improperly low discount rates that are unrelated to the time value of money and violate long-standing norms of regulatory analysis (embodied on OMB Circular A-4 before it was revised in 2023 to accommodate the SCC). To the extent that regulatory agencies must use some value for the social cost of carbon, OMB should ensure that any value reflects realistic modeling inputs, more appropriate time horizons, and discount rates that actually reflect the net present value of benefits and costs.

Conclusion

GPA Midstream strongly supports OMB's work to identify and reduce unnecessary and overly burdensome regulations. Reach out if you have any questions or want to talk more on the input provided.

Respectfully submitted,



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[7] Press Release, EPA Announces Action to Address Costly Obama, Biden "Climate" Measurements (Social Cost of Carbon) (Mar. 12, 2025), *available at*, https://www.epa.gov/newsreleases/epa-announces-action-address-costly-obama-biden-climate-measurements-social-cost#:~:text=Home-,EPA%20Announces%20Action%20to%20Address%20Costly%20Obama%2C%20Biden%20%E2%80%9CClimate%E2%80%9D,of%20a%20foundation%20in%20legislation.