

PROVIDING FOR CONGRESSIONAL DISAPPROVAL UNDER CHAPTER 8 OF TITLE 5, UNITED STATES CODE, OF A RULE SUBMITTED BY THE ENVIRONMENTAL PROTECTION AGENCY RELATING TO “OIL AND NATURAL GAS SECTOR: EMISSION STANDARDS FOR NEW, RECONSTRUCTED, AND MODIFIED SOURCES REVIEW”

JUNE 17, 2021.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PALLONE, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.J. Res. 34]

The Committee on Energy and Commerce, to whom was referred the joint resolution (H.J. Res. 34) providing for congressional disapproval under chapter 8 of title 5, United States Code, of a rule submitted by the Environmental Protection Agency relating to “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review”, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

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PURPOSE AND SUMMARY

H.J. Res. 34, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of a rule submitted by the Environmental Protection Agency relating to “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review”, was introduced on March 26, 2021 by Representatives Diana DeGette (D–CO), Scott Peters (D–CA), Conor Lamb (D–PA) and 26 other original cosponsors and was referred to the Committee on Energy and Commerce.

If the joint disapproval resolution is enacted, the 2020 Rescission Rule “shall be treated as though such rule had never taken effect,”¹ reinstating the methane and volatile organic compound (VOC) pollution reduction requirements established under the 2012 and 2016 Oil and Gas Rules.²

The Clean Air Act (CAA) authorizes and mandates the Environmental Protection Agency (EPA) to protect Americans from dangerous air pollution. Under section 111(b), the EPA must set new source performance standards (NSPS) for categories of stationary sources that cause, or significantly contribute to, air pollution that endangers public health or welfare.³ In 2012 and 2016, the EPA promulgated rules adding emission standards for greenhouse gases (GHGs) (in the form of limitations on methane emissions) and updating VOC emission standards for new, reconstructed, and modified sources throughout the production, processing, transmission, and storage segments of the oil and gas sector.⁴

In 2020, the EPA issued deregulatory rules that rolled back the 2012 and 2016 standards.⁵ Notably, the 2020 Rescission Rule eliminated both methane pollution standards for the oil and gas sector and all air pollution standards for the transmission and storage segments of the oil and gas sector. It also removed the predicate for EPA’s obligation to address the extensive methane pollution emitted by existing sources and established a new, non-statutory requirement that EPA make an additional, pollutant-specific finding of significant contribution (SCF) to endangerment before addressing harmful air pollution from a sector already regulated under the CAA.

The Congressional Review Act (CRA) is an oversight tool that Congress may use to overturn a major rule issued by a federal agency.⁶ The CRA requires agencies to report on their rulemaking activities to Congress, provides Congress with special procedures to consider legislation to overturn those rules, and prevents agencies

¹ 5 U.S.C. § 801(f).

² U.S. Environmental Protection Agency, *Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews* (Aug. 16, 2012) 77 Fed. Reg. 49490 (*Hereinafter 2012 Oil and Gas Rule*); U.S. Environmental Protection Agency, *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources* 81 Fed. Reg. 35824 (June 3, 2016) (*Hereinafter 2016 Oil and Gas Rule*).

³ Clean Air Act § 111(b)(1)(A)–(B).

⁴ 2012 Oil and Gas Rule; 2016 Oil and Gas Rule.

⁵ U.S. Environmental Protection Agency, *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review* 85 Fed. Reg. 57018 (Sept. 14, 2020) (*Hereinafter 2020 Rescission Rule*). H.J. Res. 34 and S.J. Res. 14 only disapprove the 2020 Rescission Rule.

⁶ 5 U.S.C. §§ 801–808.

from issuing the same or rules that are substantially the same in the future.

The purpose of reporting H.J. Res. 34 is to clearly demonstrate the Committee’s disapproval of a deregulatory rule that removed critical health and welfare protections. The Committee’s intent in taking that action is to put those protections back into place. Further, reporting H.J. Res. 34 is intended to comply with the special procedures under the CRA to consider legislation to overturn the rule.

Passage of this resolution of disapproval will indicate Congress’ disapproval of many aspects of the 2020 Rescission rule and specifically rejects: (1) removing the transmission and storage segments of the oil and natural gas production sources category; (2) repealing standards for emissions of GHGs (in the form of limitations on methane emissions); (3) negating the EPA’s statutory obligation to regulate existing oil and gas sources under section 111(d); and (4) creating new legal hurdles by requiring a pollutant-specific SCF before regulating a particular pollutant under section 111, despite no basis in the plain language of section 111 to do so. The Committee also strongly disagrees with the legal interpretations underpinning the 2020 Rescission Rule.

On the other hand, the Committee agrees with the legal underpinnings of the 2016 Oil and Gas Rule, which would be reinstated upon enactment of the resolution of disapproval. Passage of the resolution of disapproval indicates Congress’ support and desire to immediately reinstate: (1) the transmission and storage segments to the regulated source category; (2) standards for GHGs (in the form of limitations on methane emissions) for new and modified sources in the production, processing, transmission, and storage segments; (3) EPA’s statutory obligation to regulate existing oil and gas sources under section 111(d); and (4) EPA’s prior interpretation that a pollutant-specific SCF is not required before regulating a particular pollutant under section 111.⁷

As discussed in the following section, effectively regulating methane emissions from oil and gas sources is critical to avoiding the worst climate endangerment, and to protecting human health and welfare. To that end, upon reinstatement of the 2016 Oil and Gas Rule, the Committee strongly encourages the EPA to take swift action to reverse the damage caused by the 2020 Rescission Rule, strengthen its regulations for new sources, and fulfill its statutory obligation to issue existing source guidelines under section 111(d).

II. BACKGROUND AND NEED FOR LEGISLATION

I. The Current and Growing Methane Pollution Problem

Methane is a potent GHG. Over a 100-year period, the emission of a ton of methane contributes 28–36 times as much to global warming as a ton of carbon dioxide, and is about 84 times more

⁷The Senate passed the companion resolution on April 28, 2021. To avoid the need for a conference and expedite its path to the President, the CRA also includes automatic “hookup” procedures. That is, once one chamber of Congress passes a disapproval resolution, it is then received by the other chamber, not referred to a committee, and any vote in the receiving house will be on the disapproval resolution initially passed by the other chamber.

powerful when measured over a 20-year timeframe.⁸ Historical emissions of methane contribute almost one-third of the total present-day warming effects resulting from human-contributed emissions of all GHG.⁹ The effects of this warming include: rapidly rising temperatures, ocean acidity, sea level rise and other flooding, more frequent droughts, heat waves and wildfires, air quality impacts, increases in temperature-related illnesses and death, and many other harms experienced by communities across the United States.¹⁰

The oil and gas source category is the largest industrial emitter of methane in the United States, and consists of hundreds of thousands of sources.¹¹ According to EPA data, it emits 7,280,000 metric tons of methane per year, or 28 percent of total U.S. methane emissions.¹² Production and processing sources emit at least 5,800,000 tons of methane, or 80 percent of the total emissions from the oil and gas source category. Transmission and storage sources emit the remaining approximately 20 percent. The actual amount of emissions is almost certainly higher,¹³ with studies showing the EPA underestimates methane emissions from the oil and gas sector by approximately 60 percent.¹⁴ A recent analysis found that the oil and gas sector released over 16 million metric tons of methane in 2019.¹⁵

Oil and gas sources also emit VOCs, which contribute to ozone and other local air pollution that cause local health impacts. Children under the age of 5 and elderly people over the age of 65 are especially sensitive to those health risks, and low-income and environmental justice communities are, as well. Oil and gas sources release other toxic air pollution alongside methane and VOCs that can worsen asthma, affect lung development in children, and increase cancer risk, immune system damage, and neurological, re-

⁸U.S. Environmental Protection Agency, *Understanding Global Warming Potentials* (updated Sept. 9, 2020) ([epa.gov/ghgemissions/understanding-global-warming-potentials](https://www.epa.gov/ghgemissions/understanding-global-warming-potentials)); See Table 8.7 of International Panel on Climate Change, *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (2013) (www.ipcc.ch/report/ar5/wg1/).

⁹*Id.*, Supplementary Material at Table 8.SM.6, pg. 8SM–13 Table 8.SM.6, pg. 8SM–13, (www.ipcc.ch/site/assets/uploads/2018/07/WGI_AR5.Chap_8_SM.pdf).

¹⁰See, IPCC, *Fifth Assessment Report* (2014) (www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf); IPCC, *Special Report: Global Warming of 1.5°C* (2018) (www.ipcc.ch/sr15/); USGCRP, *The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment* (2016) (www.health2016.globalchange.gov/); USGCRP, *Fourth National Climate Assessment Volume II: Impacts, Risks, and Adaptation in the United States* (2018) (https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf).

¹¹The 2016 Oil and Gas rule covered roughly 60,000 wells constructed since 2015, and there are more than 800,000 existing wells in operation. Comments on 2019 Proposed Rule, (www.edf.org/sites/default/files/content/Joint%20Environmental%20Comments%20on%20EPA%27s%20Proposed%20NSPS%20Review.pdf); Environmental Defense Fund, *Federal Methane Map, Oil and Gas Population: United States* (www.edf.org/federalmethanemap).

¹²This value is from the EPA's 2021 Greenhouse Gas Inventory (GHGI) and includes emissions in the "oil and gas source category" which covers production through transmission and storage, but not all oil and gas methane emission sources are included in the GHGI. For example, it does not include the distribution segment or abandoned oil and gas wells. For all oil and gas emissions included in the GHGI, total methane emissions are 7.9 million metric tons, or 8.1 if including abandoned oil and gas wells.

¹³See Joannes D. Maasakkers, et al., *2010–2015 North American methane emissions, sectoral contributions, and trends: a high-resolution inversion of GOSAT observations of atmospheric methane*, European Geosciences Union, Atmos. Chem. Phys., (Mar. 22, 2021) (www.acp.copernicus.org/articles/21/4339/2021/); Benjamin Hmiel, et al., *Preindustrial 14CH4 indicates greater anthropogenic fossil CH4 emissions*, Nature (Feb. 19, 2020) (www.nature.com/articles/s41586-020-1991-8).

¹⁴Alvarez, R. et al., *Assessment of methane emissions from the U.S. oil and gas supply chain*, Science (Jul. 13, 2018) (www.science.sciencemag.org/content/361/6398/186).

¹⁵Environmental Defense Fund, *2019 U.S. Oil & Gas Methane Emissions Estimate* (Apr. 2021) (www.blogs.edf.org/energyexchange/files/2021/04/2019_EDF-CH4-Estimate.pdf).

productive, and developmental problems. This dangerous pollution impacts more than nine million Americans who live in the frontline communities near oil and gas operations, including ones located near transmission and storage segments.¹⁶

Without bold action to curb emissions from the hundreds of thousands of sources in the oil and gas sector, methane pollution will continue to cause significant harm to public health, threaten the stability of our economy, and compromise the well-being of future generations and the planet. Addressing methane pollution from the oil and gas sector is an urgent and essential step to effectively prevent the worst endangerment from GHG pollution and mitigate climate change. One study found that swift adoption of comprehensive methane reduction measures can dramatically slow the rate of warming in the near term and lower the amount of warming over the long term.¹⁷ The Global Methane Assessment found that fast and ambitious methane mitigation is one of the best strategies available today to deliver immediate and long-lasting benefits for climate, agriculture, human and ecosystem health. It also found that currently available and cost-effective measures can reduce methane emissions and rapid and dramatic methane pollution cuts could slow global warming, while preventing a quarter-million deaths every year.¹⁸

Climate change is caused by the accumulation in the atmosphere of GHGs from numerous sources—some individually small. In order to mitigate climate change, and protect human health and welfare, the EPA must address the cumulative pollution problem, including emissions from types of stationary sources that are individually small but collectively a significant part of the pollution problem. The United States cannot become GHG neutral by 2050 without reducing GHGs from all industrial sources, regardless of the relative size of any one emission source or the disparate locations of the points of emission.

Accordingly, regulation of emissions from new and existing oil and gas sources, including those located in the production, processing, and transmission and storage segments, is necessary to protect human health and welfare, including through combatting climate change, and to promote environmental justice.

II. Fundamental Flaws with the 2020 Rescission Rule

Under the CAA, the EPA Administrator must protect human health and welfare from pollution that causes harm. That is exactly what the 2012 and 2016 Oil and Gas Rules did. Using strained and counterfactual arguments to obfuscate the clear meaning of the statute, and ignoring all prior EPA interpretations and Congressional intent, the 2020 Rescission Rule removed those protections, replacing them with nothing. Congress is using its authority under the CRA to disapprove of the 2020 Rescission Rule, treating the de-

¹⁶ Environmental Defense Fund, *Federal Methane Map, Oil and Gas Population: United States* (www.edf.org/federalmethanemap); CATF, *Gaspung For Breath* (2016) (www.catf.us/wp-content/uploads/2018/10/CATF_Pub_GaspungForBreath.pdf).

¹⁷ Ilissa B Ocko, et al., *Acting rapidly to deploy readily available methane mitigation measures by sector can immediately slow global warming*, Environmental Research Letters (May 4, 2021) (www.iopscience.iop.org/article/10.1088/1748-9326/abf9c8/pdf).

¹⁸ U.N. Environment Programme, *Global Methane Assessment: Benefits and Costs of Mitigating Methane Emissions* (May 6, 2021) (www.unep.org/resources/report/global-methane-assessment-benefits-and-costs-mitigating-methane-emissions).

regulatory rule as if it had never taken effect, and reinstating the protections of the 2012 and 2016 Oil and Gas Rules.

Adopting this resolution indicates that the EPA should regulate, under the authority of section 111, methane and other air pollutant emissions from both new and existing oil and gas sources, including those located in the production, processing, and transmission and storage segments.¹⁹ This resolution of disapproval also indicates the strong rejection of the numerous harmful components of the 2020 Rescission Rule, and reaffirms the EPA's authority and obligation to protect the public from harmful climate pollution like methane.²⁰

A. Affirms that Section 111 Authorizes Regulation of Methane from All Oil and Gas Sources

The 2020 Rescission Rule eliminated both methane NSPS for the oil and gas source category and all air pollution NSPS for the transmission and storage segments of the oil and gas sector. It also established a new, non-statutory requirement that EPA make an additional, pollutant-specific SCF to endangerment before addressing harmful air pollution from a sector already regulated under the CAA. Those elements of the rule are, at best, incorrect interpretations of the CAA and, at worst, thinly veiled attempts to avoid regulating the largest source of methane pollution in the United States. For the reasons described below, the 2020 Rescission Rule should be disapproved, and the 2012 and 2016 Oil and Gas Rules should be reinstated.

i. Crude Oil and Natural Gas Production Source Category

Enacting the resolution of disapproval indicates Congress's rejection of the 2020 Rescission Rule's determination of the scope of the Crude Oil and Natural Gas Production source category. Further, it affirms that previously, the EPA properly determined the scope of the source category as including the transmission and storage segments, in addition to the processing and production segments, for purposes of regulation under section 111.

In 1979, EPA first listed for regulation the "Crude Oil & Natural Gas Production" source category consisting of large components of the oil and gas industry.²¹ The EPA subsequently promulgated NSPS for VOC emissions from sources in the production and processing segments in 1985,²² and in the 2012 Oil and Gas Rule promulgated NSPS for VOC emissions from additional sources, including sources in the transmission and storage segments of the industry.²³ The 2016 Oil and Gas Rule promulgated NSPS for VOC emissions from additional sources and NSPS for methane emissions

¹⁹Section 111 is one of the primary tools in the CAA for regulation of air pollutants from both new and existing stationary sources. Section 111 sets out a multi-step process for this regulation. Section 111(b) directs the EPA Administrator to list for regulation a source category that, in the Administrator's judgment, causes, or contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare (referred to herein as dangerous air pollution). This provision further directs the EPA to promulgate NSPS for emissions of air pollutants from new sources in that source category, and section 111(d) directs EPA to establish requirements for states to regulate emissions of certain air pollutants, including GHGs, from existing sources in that source category.

²⁰See Purpose and Summary.

²¹See 49 Fed. Reg. 49222 (Aug. 21, 1979).

²²50 Fed. Reg. 26122 (June 24, 1985).

²³2012 Oil and Gas Rule.

from sources in the production, processing, and transmission and storage segments.²⁴ In 2016, EPA also reaffirmed the scope of the 1979 source category and, alternatively, revised the source category to include the transmission and storage segments based on the interrelatedness of, and similarities between, the segments. The 2020 Rescission Rule rescinded the EPA's conclusions in the 2012 and 2016 Oil and Gas Rules that the scope of the 1979 source category includes the transmission and storage segments.

The EPA, in the 2020 Rescission Rule, erred in rescinding that determination. In the CAA, Congress provided the EPA with wide latitude to determine the scope of a source category under section 111 and to expand the scope of an already-listed source category if the agency later determines that it is reasonable to do so. In the 2016 Oil and Gas Rule, the EPA correctly determined that the equipment and operations at production, processing, and transmission and storage facilities are a sequence of functions that are interrelated and necessary for the overall purpose of extracting, processing, and transporting natural gas for distribution. Furthermore, the EPA correctly determined that the types of equipment used and the emissions profile of the natural gas in the transmission and storage segments do not so distinctly differ from the types of equipment used and the emissions profile of the natural gas in the production and processing segments as to require that the EPA create a separate source category listing. Indeed, even the presence of large distinctions in equipment type and emissions profile across two segments would not necessarily preclude EPA from regulating those segments as a single source category, so long as the EPA could identify some meaningful relationship between them.

ii. Regulation of Methane

Enacting the resolution of disapproval indicates Congress's strong rejection of the 2020 Rescission Rule's fundamentally flawed justifications for the rescission of the methane standards in the 2016 Oil and Gas Rule. First, the 2020 Rescission Rule takes the position that the methane standards were redundant to the VOC standards on the grounds that the two sets of standards applied to the sources in the same way, so that by complying with one (for example, the VOC standards), the sources would also comply with the other (for example, the methane standards) without having to take any different action.²⁵ But this does not mean that the two sets of standards are redundant, only that the EPA formulated them to impose the same requirements for the same types of equipment, so that sources could comply with them in an efficient manner. Further, in the 2016 Oil and Gas Rule, the EPA determined that it had a rational basis for promulgating the methane standards, that was reasonable and appropriate.²⁶

Most importantly, the 2020 Rescission Rule's erroneous assertion that standards of performance for methane are redundant to standards for VOCs was based on a fundamental misinterpretation of section 111, and the critical importance of section 111(d) in Con-

²⁴2016 Oil and Gas Rule. The rule established standards for emissions of greenhouse gases in the form of limitations on methane emissions. *Id.* at 35840.

²⁵2020 Rescission Rule at 57031.

²⁶2016 Oil and Gas Rule at 35843.

gress scheme. Section 111(b) standards of performance for methane trigger an obligation under section 111(d) for EPA to promulgate requirements for methane emitted from existing oil and gas sources. Standards of performance for VOCs (for purposes of addressing ozone), however, do not trigger any such requirement for existing sources.²⁷ Because of the structure of section 111, the EPA must consider emissions from both new and existing sources when evaluating whether standards are appropriate to address dangerous air pollution. The 2020 Rescission Rule’s misinterpretation of section 111 was glaring and enormously consequential because existing sources emit the vast majority of methane in the oil and gas sector.²⁸ By rescinding the methane NSPS on the spurious grounds of redundancy with the VOC standards, the 2020 Rescission Rule effectively blocked the EPA from addressing most of the dangerous air pollution from the oil and gas sector.

B. Affirm that Section 111 Does Not Require a Pollutant-Specific Significant Contribution Finding

Passage of the resolution of disapproval indicates Congress’s intent to make clear that the 2020 Rescission Rule erred in contending that section 111 “requires, or at least authorizes [EPA] to require,” a pollutant-specific SCF as a predicate for promulgating a standard of performance for that pollutant.²⁹ The plain language of section 111 does not support this interpretation. The EPA’s statutory interpretation prior to the 2020 Rescission Rule is correct, and would be reinstated by this resolution of disapproval. This action reaffirms that once a source category is listed, regulation of any pollutant is reasonable provided that the EPA has a rational basis for concluding that regulation is appropriate to address dangerous air pollution. The EPA appropriately so concluded in the 2016 Oil and Gas Rule in deciding to promulgate standards for emissions of greenhouse gases in the form of limitations on methane emissions.

i. Statutory Interpretation of Section 111

Congress designed section 111 to address stationary source categories that invariably emit at least several types of air pollutants; many source categories combust fossil fuels and thus result in emissions of numerous types of air pollutants. Section 111 explicitly sets out a step-by-step process for EPA to address the risks to public health or welfare that stationary sources present, and clear-

²⁷ Congress designed section 111 to take an integrated approach to new and existing sources and as a result, the effect of regulation of new sources on regulation of existing sources is important. For example, under section 111, the EPA lists source categories on the basis of emissions from both new and existing sources, see *Nat’l Lime Ass’n v. EPA*, 627 F.2d 416, 433 n.48 (D.C. Cir. 1980); *Nat’l Asphalt Pavement Ass’n v. Train*, 539 F.2d 775, 784 (D.C. Cir. 1976). The Committee agrees that listing decisions should be based on emissions from new and existing sources. VOCs present a special case, distinct from other pollutants regulated under section 111(d) because although they are not expressly listed as section 108(a) pollutants, they are regulated as precursors to listed pollutants (ozone and particulate matter) and as a result, the promulgation of VOC standards do not trigger existing source requirements.

²⁸ The 2016 Oil and Gas rule covered roughly 60,000 wells constructed since 2015. There are more than 800,000 existing wells in operation, which EPA will be obligated to regulate under 111(d). In 2020, these existing sources emitted 10 million tons of methane, 2.3 million tons of VOCs, and nearly 90,000 tons of HAPs in 2020. Comments on 2019 Proposed Rule (www.edf.org/sites/default/files/content/Joint%20Environmental%20Comments%20on%20EPA%27s%20Proposed%20NSPS%20Review.pdf); Environmental Defense Fund, *Federal Methane Map, Oil and Gas Population: United States* (www.edf.org/federalmethanemap).

²⁹ 2020 Rescission Rule at 57034.

ly indicates the basis EPA must develop to support each step. As the first step, section 111(b)(1)(A) requires the EPA to list “a category of sources” for regulation if it “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” Next, section 111(b)(1)(B) requires the EPA to propose and finalize regulations “establishing . . . standards of performance” for new sources. In section 111(a)(1), a “standard of performance” is defined as “a standard for emissions of air pollutants” that is based on what EPA determines to be the “best system of emission reduction . . . adequately demonstrated.”³⁰

Section 111(b)(1)(A) is clear that the EPA is to make a SCF at the first step of the process, the listing of the source category, and it must apply to the impact of the “category of sources” on “air pollution.” This provision does not require the EPA to make a SCF for individual air pollutants emitted from the source category, nor does it even mention individual air pollutants. Section 111(b)(1)(B) and section 111(a)(1), read together, obligate the EPA to establish standards of performance for air pollutants emitted by sources in the listed source category, and make clear that EPA must base those standards on the “best system of emission reduction . . . adequately demonstrated.”

Section 307(d) provides that the EPA’s decisions whether to promulgate standards of performance for particular pollutants must be guided by the “arbitrary and capricious” standard under section 307(d)(9).³¹ Thus, when the EPA determines it is appropriate to promulgate section 111 standards, they will be subject to an “arbitrary and capricious” standard of judicial review.

In recent rulemakings concerning GHG emissions from fossil fuel-fired electric generating plants and from oil and gas sources, the EPA, as the expert agency, applied what it termed the “rational basis test,” under which it must set forth a rational basis for promulgating a standard of performance for an air pollutant.³² This interpretation is fully consistent with the provision of section 111 and the section 307(d)(9) “arbitrary and capricious” standard.³³

Contrary to the 2020 Rescission Rule, section 111 cannot be interpreted, given the plain language of the statute and as a matter of Chevron step 1,³⁴ to require that the EPA make a SCF for each pollutant as a predicate to promulgating a standard of performance for that pollutant. Given that the statute is not ambiguous, the EPA cannot interpret section 111 to authorize the EPA to exercise discretion to require such a pollutant-specific SCF as a predicate for promulgating a standard of performance for the pollutant, and decline to promulgate such a standard in the event that EPA de-

³⁰ See *American Electric Power Co. Inc. v. Connecticut*, 564 U.S. 410, 426–27 (2011) (AEP) (summarizing the regulatory process under section 111).

³¹ See AEP, 564 U.S. at 427 (“EPA may not decline to regulate carbon-dioxide emissions from powerplants if refusal to act would be ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law’” (citing section 307(d)(9)(A)).

³² 2016 Oil and Gas Rule; AEP, 564 U.S. at 426–427.

³³ EPA’s record-based application of this “rational basis” test is consistent with the U.S. Supreme Court’s interpretation in *American Electric Power Co. Inc. v. Connecticut*, AEP, 564 U.S. at 426–427.

³⁴ *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) (creating a two-step inquiry for courts to follow in reviewing agency interpretations of law—step one asks whether the statute is clear on its face with respect to the specific issue, and if so, the court must effectuate Congress’s stated intent; but if the statute is silent or ambiguous, then, at step two, the court defers to the agency’s reasonable interpretation).

clines to make such a pollutant-specific SCF.³⁵ This reality is brought into sharp relief by contrasting it with numerous other CAA provisions that explicitly do require EPA to make a pollutant-specific cause-or-contribution finding before regulating a pollutant.³⁶

The 2020 Rescission Rule’s claim that sections 111(b)(1)(B) and 111(a)(1) must be read in conjunction with 111(b)(1)(A) to require, or at least authorize, the EPA to require a pollutant-specific SCF³⁷ is inconsistent with section 111 for the reasons described above. Moreover, such an interpretation would render the source-category SCF required under section 111(b)(1)(A) a nullity. Congress did not intend to require the EPA to go through the exercise of determining that a source category contributes significantly to dangerous air pollution on account of its pollutant emissions considered together, and then also require the EPA to make the same determination for each pollutant individually that the EPA sought to regulate. That makes no sense.

The premise of the 2020 Rescission Rule’s interpretation is that the rational basis test cannot be used to determine which air pollutants should be subject to standards of performance because the test is “unduly vague” and thus would allow the EPA “virtually unfettered discretion” to promulgate NSPS for “air pollutants emitted in small quantities or otherwise having little adverse effect.”³⁸ This premise is inconsistent with section 307(d)(9). Further, there is no evidence, and the 2020 Rescission Rule cites none, that the EPA would regulate air pollutants that were emitted in amounts too small to be of concern or were otherwise innocuous. If the EPA were to regulate such small amounts of pollutants without a rational basis, such action would be subject to judicial review and potentially invalidated under section 307(d)(9)’s arbitrary and capricious standard.

While section 111 is clear that the EPA is not required, or authorized to require, a pollutant-specific SCF as a predicate for regulation, the Committee recognizes that the EPA has the discretion to make a pollutant-specific SCF as a supplement to its rational basis determination for regulating a particular pollutant.³⁹ The EPA may choose to make such a finding to further explain its decision, to inform the public about the risks of the pollutant, or for other purposes. However, it is the rational basis determination as to the risk a pollutant poses to endangerment of human health or welfare that remains the statutory basis for the EPA’s action.

Furthermore, the 2020 Rescission Rule was incorrect in interpreting section 111 to require that the finding of whether emissions of an air pollutant “contribute significantly” to dangerous air pollution must be based on some “identif[ied] standard or established set of criteria,”⁴⁰ and not the facts-and-circumstances approach

³⁵ Thus, and in contrast to the erroneous position in the 2020 Rescission Rule, section 111 contemplates that the EPA list a source category on the basis of all of its air pollutants, taken collectively, and regardless of whether any of them, taken individually, contribute significantly to dangerous air pollution, and then proceed to promulgate standards of performance for pollutants that meet the rational basis test under section 307(d)(9).

³⁶ See, e.g., CAA §§ 108(a)(1)(A) and (B), 115(a), 202(a)(1), 211(c)(1), 231(a)(2).

³⁷ 2020 Rescission Rule at 57035.

³⁸ 2020 Rescission Rule at 57037.

³⁹ See 167 Cong. Rec. S2283 (statement of Sen. Heinrich) (“EPA could make such a [pollutant-specific significant contribution] finding if it chooses to do so on a case-by-case basis”).

⁴⁰ 2020 Rescission Rule at 57038.

that EPA has used in making the SCF for the source category.⁴¹ It is fully appropriate for EPA to exercise its discretion to employ a facts-and-circumstances approach, particularly in light of the wide range of source categories and the air pollutants they emit that EPA must regulate under section 111.

ii. Legislative History and Other Provisions in Section 111

The statutory interpretation set forth in the 2020 Rescission Rule requiring a pollutant-specific SCF is inconsistent with the legislative history of section 111 and with section 111(f). Nothing in the legislative history of the 1970 CAA Amendments, in which section 111 was first enacted, supports the pollutant-specific SCF interpretation. The EPA listed source categories⁴² and promulgated standards of performance⁴³ continuously in the subsequent decades, and never adopted a pollutant-specific SCF interpretation until the 2020 Rescission Rule. Congress made major revisions to section 111 in the 1977 CAA Amendments—including revising the SCF provisions of section 111(b)(1)(A)—and 1990 CAA Amendments, but never indicated any concern over the EPA’s reading of the plain text that section 111 requires a SCF for the source category but not individual air pollutants.⁴⁴ Instead, Congress adopted and revised section 111(f), requiring the EPA to increase the pace of promulgating standards of performance. Because the pollutant-specific SCF interpretation would unavoidably slow down the EPA promulgation of standards of performance and could lead to fewer standards,⁴⁵ the 2020 Rescission Rule interpretation is contrary to concerns Congress expressed in adopting section 111(f) that the EPA must move swiftly to regulate under section 111.⁴⁶

C. Affirm that Section 111 Obligates and Authorizes the EPA to Regulate Existing Sources in All Segments

Enacting the resolution of disapproval also has the effect of restoring the EPA’s obligation to regulate methane emissions from existing sources in the production, processing, transmission, and storage segments of the oil and natural gas sector pursuant to section 111(d).⁴⁷ Section 111(d) requires EPA to publish existing

⁴¹ See, e.g., 2016 Oil and Gas Rule, at 35843.

⁴² List of Categories of Stationary Sources, 36 Fed. Reg. 5931 (March 31, 1971).

⁴³ Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction Is Commenced After August 17, 1971, 36 Fed. Reg. 24875 (December 23, 1971).

⁴⁴ The 2020 Rescission Rule cites several statements in the 1977 CAA Amendments legislative history, summarizes the interpretations of those statements offered by commenters supporting and opposing the pollutant-specific SCF, and accepts the interpretations offered by the former and rejects those offered by the latter. 2020 Rescission Rule at 57053–54. The cited statements in the 1977 CAA Amendments legislative history were general and did not apply specifically to section 111 and as a result, the rule’s interpretation of those statements is incorrect.

⁴⁵ For example, 7 days before the end of the last Administration, and without any public notice or comment, EPA published a final rule that applied the pollutant-specific SCF in an attempt to preclude EPA from regulating greenhouse gases under section 111 from any source category except for fossil fuel-fired power plants. U.S. Environmental Protection Agency, *Pollutant-Specific Contribution Finding for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, and Process for Determining Significance of Other New Source Performance Standards Source Categories* (Jan. 13, 2021) 86 Fed. Reg. 2542. The D.C. Circuit vacated the rule. *California v. EPA*, No. 21–1035, Order, ECF 1893155 (D.C. Cir. April 5, 2021).

⁴⁶ House Committee on Interstate and Foreign Commerce, *Clean Air Act Amendments of 1977*, at 194–195, 95th Cong. (May 12, 1977) (H. Rept. 95–294).

⁴⁷ See also Exec. Order No. 13990, 86 Fed. Reg. 7037 (Jan. 25, 2021) (directing the EPA to consider “proposing new regulations to establish comprehensive standards of performance and

source guidelines for any air pollutant that meets two criteria: the air pollutant is neither a pollutant regulated under section 108(a) (i.e., criteria pollutants) nor a hazardous air pollutant (HAP) regulated under section 112; and the air pollutant is emitted by sources that, if they were new sources, would be subject to a NSPS for those emissions.

Some have argued that the exclusion in section 111(d) for HAPs covers those pollutants listed under section 112 and precludes the EPA from regulating a source category under section 111(d) for any pollutant if that source category has been regulated under section 112. This argument is fundamentally incompatible with the language, structure, and Congressional intent in creating and adopting these CAA provisions. It would destroy the conscientious design of the CAA and perversely transform section 111(d) from a gap-filling provision to a gap-creating provision. Moreover, the D.C. Circuit has considered this issue and held that the EPA has the authority to regulate a source category for HAPs under section 112 and regulate that same source category for different pollutants under section 111(d).⁴⁸ Since enactment of the 1990 CAA Amendments, every administration has correctly come to the same conclusion.⁴⁹ Any reading of the CAA that precludes the EPA from regulating sources under both provisions would be contrary to Congress intent to provide a structure under which the EPA has a mandate and authority to mitigate air pollution that endangers human health and welfare.

Disapproval of the 2020 Rescission Rule reinstates the methane new source requirements promulgated under section 111(b) by the 2016 Oil and Gas Rule. Since it is not regulated as a criteria pollutant under section 108(a) or a HAP under section 112, methane, as emitted from the oil and natural gas sector, is an air pollutant that meets the two criteria in section 111(d). Therefore, the EPA has the authority and a legal obligation to issue existing source guidelines under section 111(d) and implementing regulations to reduce methane emissions from existing sources in the oil and gas sector.

The EPA's obligation extends not only to the production and processing segments of the oil and gas sector, but also to the transmission and storage segments. Section 111(d) requires the EPA to issue existing source guidelines for all sources to which a federal NSPS would apply. As explained above, the resolution of disapproval has the effect of reinstating the NSPS for the transmission and storage segments. Therefore, the EPA is obligated to issue existing source guidelines for methane that cover the transmission and storage segments in addition to the production and processing segments of the oil and gas sector.

emission guidelines for methane and volatile organic compound emissions from existing operations in the oil and gas sector, including the exploration and production, transmission, processing, and storage segments, by September 2021”).

⁴⁸ *Am. Lung Assoc. v. EPA*, 985 F.3d 914, 977–988 (D.C. Cir. 2021).

⁴⁹ See, e.g., 56 Fed. Reg. 24,468, 24,469 (May 30, 1991); 65 Fed. Reg. 66,672, 66,674–75 (Nov. 7, 2000); 70 Fed. Reg. 15,994, 16,031–32 (Mar. 29, 2005); 73 Fed. Reg. 44,354, 44,417–18 (July 30, 2008); 80 Fed. Reg. 64,662, 64,710 (Oct. 23, 2015); 84 Fed. Reg. 32,520, 32,533 (July 8, 2019).

III. Disapproval of the Methane Rescission Rule Does Not Preclude Future Section 111 Regulation of the Oil and Gas Industry

Congressional disapproval of the 2020 Rescission Rule would not risk invalidating any subsequent regulation that strengthens air pollution reduction requirements pursuant to the CRA’s “substantially the same” language.⁵⁰ First, the 2020 Rescission Rule is a purely deregulatory rule; it would be absurd to contend that disapproval of a deregulatory action would block a future regulatory action. Second, and more specifically, disapproval of the 2020 Rescission Rule does not preclude future regulation under section 111 of methane, VOCs, or other pollution from the oil and gas industry. This resolution of disapproval nullifies a rule that strips away public health and welfare protections and deregulates the oil and gas industry. Any future rule that imposes regulatory requirements on the oil and gas industry, provides additional public health and welfare protections, or establishes or strengthens standards on sources of methane and other pollutant emissions would have the opposite intent and effect of the 2020 Rescission Rule. Any such future rule, therefore, cannot be construed as “substantially the same” under the CRA. The Committee has drafted this report to make clear the Committee’s intent and to enable EPA to give effect to this resolution of disapproval when considering future rulemaking.

III. COMMITTEE HEARINGS

For the purposes of section 3(c) of rule XIII of the Rules of the House of Representatives, the following hearings were used to develop or consider H.J. Res. 34:

The Subcommittee on Environment and Climate Change held a hearing on April 29, 2021. The hearing was entitled, “Fiscal Year 2022 EPA Budget.” The Subcommittee received testimony on the EPA’s actions regarding methane emissions from the following witness:

- The Honorable Michael S. Regan, Administrator, U.S. Environmental Protection Agency.

IV. COMMITTEE CONSIDERATION

H.J. Res. 34, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of a rule submitted by the Environmental Protection Agency relating to “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review”, was introduced on March 26, 2021 by Representatives DeGette (D–CO), Peters (D–CA), Lamb (D–PA), and 26 other original cosponsors, and was referred to the Committee on Energy and Commerce. It was then referred to the Subcommittee on Environment and Climate Change on March 29, 2021. A hearing on the bill was held on April 29, 2021.

On June 10, 2021, the full Committee met in virtual open markup session to consider H.J. Res. 34. During consideration of the bill, an amendment offered by Mr. Duncan, was ruled out of order by the Chairman because the amendment violates House rule XVI, clause 7. Mr. Pallone, Chairman of the committee, offered a motion to order H.J. Res. 34, reported favorably to the House, without

⁵⁰ 5 U.S.C. § 801(b)(2).

amendment. The motion on final passage was agreed to by a roll call vote of 30 yeas to 22 nays (roll call no. 26), a quorum being present.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee advises that there was one record vote taken on H.J. Res. 34, including a motion by Mr. Pallone ordering H.J. Res. 34 favorably reported to the House, without amendment. The motion on final passage of the bill was approved by a record vote of 30 yeas to 22 nays. The following are the record votes taken during Committee consideration, including the names of those members voting for and against:

Committee on Energy and Commerce
117th Congress

Full Committee
(ratio: 32-26)

ROLL CALL VOTE #26

Bill: H.J. Res. 34, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of a rule submitted by the Environmental Protection Agency relating to "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review"

Motion: A motion by Mr. Pallone of New Jersey to order **H.J. Res. 34** transmitted favorably to the House, without amendment (Final Passage)

Disposition: **AGREED TO** by a roll call vote of 30 yeas to 22 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Pallone	X			Mrs. Rodgers		X	
Mr. Rush	X			Mr. Upton			
Ms. Eshoo	X			Mr. Burgess		X	
Ms. DeGette	X			Mr. Scalise		X	
Mr. Doyle	X			Mr. Latta		X	
Ms. Schakowsky	X			Mr. Guthrie		X	
Mr. Butterfield	X			Mr. McKinley		X	
Ms. Matsui				Mr. Kinzinger			
Ms. Castor	X			Mr. Griffith		X	
Mr. Sarbanes	X			Mr. Bilirakis		X	
Mr. McNerney	X			Mr. Johnson		X	
Mr. Welch	X			Mr. Long			
Mr. Tonko	X			Mr. Bucshon		X	
Ms. Clarke	X			Mr. Mullin		X	
Mr. Schrader	X			Mr. Hudson			
Mr. Cárdenas	X			Mr. Walberg		X	
Mr. Ruiz	X			Mr. Carter		X	
Mr. Peters	X			Mr. Duncan		X	
Mrs. Dingell	X			Mr. Palmer		X	
Mr. Veasey	X			Mr. Dunn		X	
Ms. Kuster	X			Mr. Curtis		X	
Ms. Kelly	X			Ms. Lesko		X	
Ms. Barragán	X			Mr. Pence		X	
Mr. McEachin				Mr. Crenshaw		X	
Ms. Blunt Rochester	X			Mr. Joyce		X	
Mr. Soto	X			Mr. Armstrong		X	
Mr. O'Halleran	X						
Ms. Rice	X						
Ms. Craig	X						
Ms. Schrier	X						
Ms. Trahan	X						
Ms. Fletcher	X						

VI. OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portion of the report.

VII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

VIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

IX. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to provide for congressional disapproval under 8 of title 5, United States Code, of a rule submitted by the Environmental Protection Agency relating to "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review".

X. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.J. Res. 34 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

XI. COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

XII. EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.J. Res. 34 contains no earmarks, limited tax benefits, or limited tariff benefits.

XIII. ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

XIV. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XV. SECTION BY SECTION ANALYSIS OF THE LEGISLATION

The legislation provides that Congress disapproves the rule submitted by the Environmental Protection Agency relating to “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review” (published at 85 Fed. Reg. 57018 (September 14, 2020)), and such rule shall have no force or effect.

XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

There are no changes to existing law made by the bill H.J. Res. 34.

XVII. DISSENTING VIEWS

We oppose H.J. Res. 34, a resolution disapproving of important reforms to air regulations for oil and natural gas sources. We oppose this unnecessary and misguided resolution because it will contribute to job losses and higher energy costs, and re-establish duplicative and burdensome regulations. It will allow the Environmental Protection Agency (EPA) to continue an inappropriate, controversial interpretation of the law, which will accelerate new regulations for sources beyond oil and natural gas, regardless of their overall contribution to air pollution.

In 2020, EPA issued two final rules to make it simpler and less burdensome for the oil and natural gas industry to comply with New Source Performance Standards (NSPS) under the Clean Air Act (CAA).¹ Combined, the two final rules were estimated to yield net benefits of \$750 to \$850 million dollars from 2021 to 2030. EPA's final rules updated and corrected the Obama-Biden Administration's national standards for the oil and natural gas industry, which fell heavily on small and medium-sized energy businesses. EPA's 2020 final rules corrected course by aligning with the requirements Congress established in the CAA and by relieving industry and consumers of burdensome overregulation.

H.J. Res. 34 is a Continuation of Partisan Attacks on American Energy Workers and Consumers

H.J. Res. 34 is yet another a partisan attempt to rollback progress made under the prior Administration and continue attacks on fossil fuels and the tens of millions of hardworking Americans in all 50 states who support the energy industry. On his first day in office, President Biden issued a sweeping Executive Order to rescind regulations and permits issued under the prior Administration, and direct Federal Agencies to establish aggressive new mandates and regulations, without regard for the costs imposed on consumers and by inflating the accounting of environmental benefits.²

On his first day in office, President Biden revoked the permit for the Keystone XL pipeline, which, according to the union workers that would have constructed the pipeline, would have created thousands of good jobs at a time when unemployment in the construction industry was 16% with 1.3 million men and women jobless. Following the decision, Terry O'Sullivan, LIUNA General President, stated "[o]nce again the President has sided with environmentalists instead of blue-collar construction workers—even though environmental concerns were more than adequately ad-

¹ U.S. Environmental Protection Agency. "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review." 85 *Federal Register* 57,018, September 14, 2020; 85 *Federal Register* 57,398, September 15, 2020.

² Executive Order 13990, 86 *Federal Register* 7037 (January 25, 2021).

dressed. Blue Collar construction workers across the U.S. will not forget this.”³

On January 27, 2020, President Biden issued another sweeping E.O. targeting American workers in the fossil fuel industry.⁴ The E.O. prioritizes global climate agreements over American jobs, the U.S. economy, and national security. The E.O. reinforces a top-down, Federal government-controlled approach to regulation and imposes a moratorium on new oil and natural gas leases on public lands and waters. In response to the Biden Administration’s E.O., the Independent Petroleum Association of America (IPAA) stated, “[I]n his first week in office, President Biden has already shown that his campaign theme to “Build Back Better” was simply campaign rhetoric. In the latest blow to American oil and natural gas producers, the Biden Administration announced it is placing an indefinite halt on new oil and natural gas leases on federal lands and waters. However, do not be fooled, this is a ban . . . This latest order, made in the name of protecting the environment, does the opposite—it will only shift jobs and energy production to Saudi Arabia and Russia, which have far less-stringent environmental controls than America.”⁵

Methane Regulation is Unlawful Under the CAA

H.J. Res. 34 would re-establish the Obama-Biden Administration’s methane standards which violate the Clean Air Act requirements, inappropriately expand to cover new sectors, and impose ineffective and redundant methane standards for production and process equipment.

Section 111 of the CAA requires EPA to set NSPS for EPA-listed categories of industrial facilities that cause, or significantly contribute to, air pollution that may be reasonably anticipated to endanger public health or welfare. The CAA requires EPA to make a formal finding that a pollutant contributes significantly to air pollution before setting NSPS requirements. Since EPA under the Obama Administration did not make this finding for transmission and storage segments to the oil and gas category, the Obama Administration regulations were inconsistent with the rule of law. In the 2020 Final Rule, EPA found that the Obama Administration’s regulation of methane was improper because it included transmission and storage, and because EPA did not establish criteria to support its significant contribution finding.

Methane Regulation is Duplicative of Existing Regulation of VOCs

H.J. Res. 34 would result in duplicative and unnecessary regulations. From oil and gas production to processing, source emissions of methane are effectively regulated by EPA and the States under the framework for controlling emissions of volatile organic compounds (VOCs), which are also a component of natural gas.

EPA found that the required VOC pollution controls also reduce methane emissions at the same time, making clear that separate regulation of methane establishes no additional health protections,

³LIUNA. (2021, February 9) *Statement on Keystone XL Pipeline Decision* [Press Release].

⁴Executive Order 14008, 86 FR 7619 (February 2, 2021).

⁵Independent Petroleum Association of America. (2021, January 2), *Don’t Be Fooled. This is a Ban on Production* [Press Release].

and thus, unnecessary. In the 2020 Final Rule, EPA discussed at length why separate VOC and methane regulations are duplicative of each other, and how the capture and control devices used to meet the NSPS requirements are the same for both VOC and methane.

H.J. Res. 34 Will Accelerate New Methane Regulations for Other Sources

H.J. Res. 34 could accelerate new regulations spanning the entire range of America’s domestic manufacturing industries under Section 111 of the CAA. The Biden Administration’s Statement of Administrative Policy for S.J. Res. 14, an identical Senate resolution, confirms this expectation, stating “the resolution will also clear the pathway for EPA to evaluate opportunities to promulgate even stronger standards under section 111 of the Clean Air Act.”⁶

Section 111 of the CAA establishes mechanisms for controlling emissions of air pollutants from stationary sources. Section 111(b) requires the first step, directing EPA to identify categories of stationary sources that “causes or contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare,” which is followed by promulgation of a standard of performance for new sources in each category. Currently, EPA maintains a list of more than seventy source categories for which a NSPS is required.⁷ Once EPA has elected to set an NSPS for sources in a given source category, Section 111(d) requires regulation of existing sources in each category.

The CAA requires EPA to formally establish that a pollutant significantly contributes to air pollution that endangers public health as a predicate to regulating that pollutant. H.J. Res. 34 will eliminate this important requirement. H.J. Res 34 would also enable EPA to add new source categories without assessing whether they make a significant contribution. In effect, H.J. Res 34 would accelerate the direct regulation of methane across all listed source categories, and new categories, regardless of their overall contribution to air pollution, for both new and existing sources spanning the entire range of industrial sources, including manufacturing, chemicals, paper, metals, and many others.

H.J. Res. 34 Hurts American Producers and U.S. Allies Seeking to Reduce Dependence on Russian Natural Gas

Today, the U.S. is the world’s largest producer of natural gas. According to the Department of Energy, U.S. gas production in 2020 was about 33.4 trillion cubic feet, the second highest annual amount recorded, mainly as result of production increases resulting from advances in horizontal drilling and hydraulic fracturing.⁸ Meanwhile, according to the EPA, methane emissions associated with natural gas and oil production declined by 23% since 1990.⁹

⁶ Office of Management and Budget. (2021, April 27), Statement of Administrative Policy, Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review.

⁷ Environmental Protection Agency. 40 CFR Part 60, *New Source Performance Standards*.

⁸ U.S. Energy Information Administration. (2021, May), *Natural Gas Explained: Where our natural gas comes from*.

⁹ U.S. Environmental Protection Agency. *Inventory of U.S. Greenhouse Gas Emissions and Sinks*.

While the majority of natural gas produced in the U.S. is delivered via pipeline to domestic consumers, the growth in the international market for natural gas has created opportunities for U.S. LNG exports, which strengthen the U.S. economy, energy security, and national security. The U.S. currently has six LNG export facilities operating near full capacity, with new projects under construction.

At the same time, Russia is attempting to strengthen its grip on European gas supplies with the construction of the state-sponsored Nord Stream 2 pipeline connecting Russia to Germany. The completion of the Nord Stream 2 pipeline, which was slowed during the Trump Administration, will increase Russia's geopolitical influence in Europe at the expense of U.S. energy producers and America's national security. Life cycle emissions from Russian natural gas are also much higher than U.S. natural gas, leading to worse environmental outcomes.¹⁰

During Full Committee Markup of H.J. Res. 34, Rep. Duncan attempted to offer an amendment providing for Congressional disapproval of Russia's Nord Stream 2 pipeline; however, the Majority ruled it out of order on germaneness grounds.

Congress should disapprove of Russia's Nord Stream 2 pipeline to create a level playing field for American energy workers. The Biden Administration's failure to stop construction of Nord Stream 2 and the Majority's unwillingness to allow an amendment to H.J. Res. 34 will strengthen Russia's grip on European gas supplies, at the expense of U.S. national interests.

Rather than attacking American energy producers and tacitly supporting foreign state-owned energy companies, the Committee Majority should be focused on efforts to lower energy costs for consumers, adhere to the proper application of the law as Congress intended, and strengthen the nation's energy security. Our foreign adversaries, such as Russia and China, benefit the most from this misguided rollback.

Unfortunately, H.J. Res. 34 takes the opposite approach. It will contribute to job losses and higher energy costs and re-establish duplicative, burdensome CAA regulations; and the inappropriate interpretation of the law that will allow the EPA to accelerate new regulations that could further harm consumers and American workers. For these reasons, we oppose H.J. Res. 34.

CATHY MCMORRIS RODGERS,
*Republican Leader, Energy
and Commerce.*

DAVID B. MCKINLEY,
*Republican Leader, Sub-
committee on Environment
and Climate Change.*

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¹⁰U.S. Department of Energy. "Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update." 84 Federal Register 49,278, September 19, 2019.