



Looking Ahead: Regulating Methane from the Oil and Natural Gas Sector

July 14, 2021

Congress and the Biden Administration are considering their next steps after [enacting a joint resolution](#) disapproving the [2020 regulation](#)—known as the 2020 Policy Rule—that removed some methane emission standards for oil and natural gas production activities. Congress passed the joint resolution under the [Congressional Review Act](#) (CRA), a law that allows Congress to overturn certain agency actions in the form of a joint resolution of disapproval. President Biden signed the resolution into law (Pub. L. No. 117-23) on June 30, 2021, effectively restoring the U.S. Environmental Protection Agency’s (EPA’s) 2016 methane requirements.

Although most of EPA’s 2016 methane rule is back in force, its fate remains unclear because of pending legislative, executive, and judicial actions. This Sidebar examines (1) the history of regulating methane emissions from the oil and gas sector under the Clean Air Act (CAA); (2) the effect of the CRA disapproval of the 2020 Policy Rule; (3) the status of related litigation; and (4) considerations for Congress.

History of Regulating Methane from the Oil and Gas Sector under the CAA

The crude oil and natural gas sector is one of the [highest-emitting industrial sectors of methane](#), a greenhouse gas (GHG), and volatile organic compounds (VOCs) in the United States. EPA has regulated air pollution from the oil and gas sector, in part, under CAA Section 111. [Section 111](#) requires EPA first to establish a list of industrial source categories to be regulated. EPA must list a source category if, “in [the EPA Administrator’s] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” EPA commonly refers to this determination as an “endangerment finding.” Once EPA lists a source category, EPA establishes “standards of performance” for new, modified, and reconstructed sources in that source category (known as new source performance standards) under [CAA Section 111\(b\)](#).

In 1979, EPA issued an endangerment finding and [listed](#) “crude oil and natural gas production” as a source category under Section 111 based on its emissions of VOC, nitrogen oxides, particulate matter, sulfur dioxide, carbon monoxide, lead, fluorides, acid mist, and hydrogen sulfide. In 2012, EPA issued standards under CAA Section 111(b) limiting VOC emissions from certain new, modified, and reconstructed sources in the oil and gas sector ([2012 Rule](#)).

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LSB10622

In an effort to achieve the [Obama Administration's goal](#) of reducing methane emissions from the oil and gas sector, EPA issued a rule revising and updating the 2012 Rule on June 3, 2016 (2016 Rule). EPA's [2016 Rule](#) expanded the emission sources covered by the 2012 Rule and added performance standards for methane emissions. The final rule established, among other things,

- methane and VOC standards for emission sources and equipment in the transmission and storage segments of oil and gas systems not regulated under the 2012 Rule, including hydraulically fractured oil well completions, pneumatic pumps, and fugitive emissions from well sites and compressor stations; and
- methane standards for hydraulically fractured gas well completions and equipment leaks at natural gas processing plants that are currently regulated under the 2012 Rule for VOCs, but not for methane emissions.

The final rule took effect on August 2, 2016 for new sources that were constructed, modified, or reconstructed after September 18, 2015 and that are subject to the rule. EPA [noted](#) that sources complying with the 2012 Rule likely would not be required to install additional controls for methane, as VOC controls also curb methane emissions for those sources.

During the Trump Administration, EPA issued several rules revising requirements in the 2016 Rule. In March 2018, EPA amended the 2016 Rule to extend deadlines to repair fugitive emission leaks and reduce the monitoring frequency for fugitive emissions for well sites located on the Alaskan North Slope ([2018 Rule](#)). In September 2020, EPA's [2020 Technical Rule](#), revised, among other things, leak detection and repair requirements for fugitive emissions, well site pneumatic pump standards, and engineer certification requirements for closed vent systems. To complement the 2020 Technical Rule, EPA also issued the [2020 Policy Rule](#), rescinding methane and VOC emission standards applicable to sources in the transmission and storage segments and methane standards that applied to sources in the production and processing segments of oil and gas systems.

In the 2020 Policy Rule, EPA argued that the 2016 VOC and methane emission standards were based on errors in defining the scope of the oil and gas source category. EPA [claimed](#) that it improperly expanded the scope of the source category in its 2012 and 2016 Rules to include the transmission and storage segments. EPA [concluded](#) that sources in the transmission and storage segments are not subject to regulation under CAA Section 111 because the 1979 listing of the "crude oil and natural gas production" as a source category under CAA Section 111 did not include the transmission and storage segments.

EPA also [asserted](#) in the 2020 Policy Rule that the methane standards were based on a flawed "endangerment finding" for methane emissions from the oil and gas source category. EPA [reasoned](#) that its endangerment finding improperly considered methane emissions from the transmission and storage segments, which are outside the scope of the source category. EPA also [explained](#) that it failed to identify criteria to assess the "significance" of the source category's methane emissions contribution to air pollution that endangers public health and welfare. Without a methane-specific "endangerment finding," EPA [concluded](#) that it does not have authority to promulgate methane emission standards from oil and gas production and processing sources under CAA Section 111.

The 2020 Policy Rule was disapproved under the CRA, effective June 30, 2021.

The Effect of the CRA Joint Resolution to Disapprove of 2020 Review Rule

The enacted CRA joint resolution disapproving the 2020 Policy Rule has two main effects. First, as of June 30, 2021, the 2020 Policy Rule is deemed no longer to have been in effect. Under the CRA, if a rule has taken effect by the time it is disapproved, the rule [has](#) "no force or effect" and "shall be treated as though such rule had never taken effect." The enactment of the CRA resolution disapproving the 2020 Policy Rule restores most but not all provisions in the 2016 Rule. Oil and gas sources that were

constructed, modified, or reconstructed after September 18, 2015 will again be subject to the VOC and methane emission standards and other requirements in the 2016 Rule, to the extent those standards and requirements were rescinded or revised in the [2020 Policy Rule](#). EPA has issued a [guidance document](#) on the effect of the CRA resolution on compliance and enforcement of the 2016 Rule and the 2020 Technical Amendments.

Other revisions to the 2016 Rule remain in effect, including the [2018 Rule](#) and the [2020 Technical Rule](#) discussed above. The [time periods](#) for Congress to take action on CRA joint resolutions of disapproval overturning the 2018 Rule and the 2020 Technical Rule have expired. Generally, Members of Congress have 60 calendar days (excluding days on which either house has adjourned by concurrent resolution) after an agency [submits](#) its rule to Congress, to introduce joint resolutions disapproving the rule. Because the 2020 Technical Rule was issued in September 2020 near the end of the Trump Administration, the [time period](#) for consideration under the CRA was extended to account for Congress's adjournment; it expired in mid-May 2021 without action from Congress.

Second, the enacted CRA joint resolution prohibits EPA from issuing a rule that is substantially similar to the 2020 Policy Rule. Specifically, the CRA [prohibits](#) an agency from reissuing a rule in “substantially the same form” or issuing a “new rule that is substantially the same” as the disapproved rule “unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.” The CRA does not define “substantially the same.” Whether a reissued or new rule is “[substantially the same](#)” as the disapproved rule could depend upon a number of factors. A new or reissued rule would also be subject to disapproval under the CRA. Further, most reviewing courts have [interpreted](#) the CRA to bar judicial review based on alleged CRA violations, leaving the political branches to resolve CRA-related issues.

EPA's Next Steps

As directed by [Executive Order \(E.O.\) 13990](#), EPA has begun the process to propose rules to reduce methane and VOCs emissions from the oil and gas sector. E.O. 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” [instructs](#) EPA to consider taking two actions by September 2021: (1) strengthen 2016 methane and VOC emission standards for new sources, and (2) propose emission guidelines for existing sources in the oil and gas sector. In May 2021, EPA began a [public outreach effort](#) to gather stakeholder input prior to proposing rules. In a September 2021 rulemaking, EPA [plans to propose](#) changes to resolve any discrepancies in regulatory requirements between the 2016 NSPS and 2020 Technical Rule.

The reinstatement of the 2016 Rule triggers EPA's duty under CAA Section 111(d) to regulate existing oil and gas sources constructed prior to September 18, 2015. When EPA sets CAA Section 111(b) emission standards for *new, modified, and reconstructed* sources for specific air pollutants, EPA must issue a “procedure” requiring states to submit plans that establish emission standards for *existing* sources for those same pollutants in their jurisdictions. EPA refers to these Section 111(d) procedures as “emission guidelines.” After issuing the 2016 Rule, EPA sent an [Information Collection Request \(ICR\)](#) to oil and natural gas companies seeking information on their existing sources to begin the Section 111(d) rulemaking process. EPA [withdrew](#) the ICR in 2017 when it began its process to revise and reconsider the 2016 Rule. EPA has not, to date, reissued a new ICR for existing oil and gas sources.

Litigation Next Steps

The CRA disapproval of the 2020 Policy Rule could affect various legal challenges to EPA's actions to address methane emissions from the oil and gas sector. The current status of the litigation is highlighted below:

- **2020 Policy Rule.** On February 14, 2021, the U.S. Court of Appeals for the District of Columbia Circuit [paused](#) the litigation challenging the rule while EPA was reconsidering it. *California v. Regan*, No. 20-1357 (D.C. Cir.). The petitioners [argued](#), among other things, that the 2020 Policy Rule was arbitrary and capricious because EPA failed to provide a reasoned and detailed explanation to reverse the policies in the 2016 Rule. On July 1, 2021, EPA [notified](#) the court that it had terminated its reconsideration of the 2020 Policy Rule upon the enactment of the CRA joint resolution and plans to submit a motion by July 30, 2021 on how to proceed in the litigation. EPA could move to dismiss the case as moot now that the rule is no longer in effect.
- **2020 Technical Rule.** On February 19, 2021, the D.C. Circuit [paused](#) the litigation challenging the rule while EPA is reconsidering it. *Environmental Defense Fund v. Regan*, No. 20-1360 (D.C. Cir.). The parties had not briefed the court on the merits before the litigation was paused. On June 21, 2021, EPA submitted a status report indicating that its review of the rule is ongoing. The court could continue to pause the litigation until EPA completes its reconsideration of the 2020 Technical Rule.
- **2016 Rule.** The D.C. Circuit [paused](#) the challenge to the 2016 Rule in 2017 while the Trump Administration reconsidered the rule. *North Dakota v. EPA*, No. 16-1242 (D.C. Cir.). The petitioners claimed that EPA failed to make the required “endangerment finding” for methane emissions from the oil and gas sector under CAA Section 111. They also argued that EPA had “unlawfully” expanded the listed “crude oil and natural gas production” source category to transmission and storage sources not previously regulated. (For a summary of the legal challenges to the rule, see [this CRS report](#).) As discussed above, EPA relied upon similar arguments in promulgating the 2020 Policy Rule. The petitioners could seek to resume the litigation now that the CRA disapproval has restored the methane and VOC emissions standards in the 2016 Rule, or the court could continue to pause the litigation until EPA completes its rulemaking to strengthen the 2016 Rule and to clarify what provisions of that rule remain in place.

In addition to litigation of EPA’s rules, in 2018, various states and stakeholders filed suit in the U.S. District Court for the District of Columbia [claiming](#) that EPA failed to establish emission guidelines regulating methane from existing sources in the oil and gas sector under CAA Section 111(d). *New York v. EPA*, No. 1:18-cv-773 (D.D.C.). The plaintiffs [asked](#) the federal district court to order EPA to propose and promulgate emissions guidelines. On July 7, 2021, EPA notified the court that the CRA joint resolution was enacted, and that it will file a report on how the parties would like to proceed in the litigation.

Considerations for Congress

As EPA plans to reduce methane emissions from the oil and gas sector further under the CAA, stakeholders will continue to debate the legal issues raised in the 2020 Policy Rule and in the litigation challenging the 2016 Rule. Without legislative action, the courts and the Biden Administration could determine the extent of EPA’s authority to regulate methane emissions under CAA Section 111.

Congress could address these legal issues that often recur when EPA regulates GHG emissions under CAA Section 111. Congress could clarify whether or when EPA must make separate endangerment findings for each pollutant regulated under CAA Section 111. Stakeholders raised similar legal arguments when challenging the GHG regulations under the Clean Power Plan (CPP) and Affordable Clean Energy (ACE) Rule, [claiming](#) that EPA failed to make the required endangerment finding for GHG emissions from power plants under CAA Section 111 and that EPA cannot rely on previous endangerment findings in the context of GHG emissions from motor vehicles. In 2021, the D.C. Circuit [ruled](#) that EPA was not required to make an endangerment finding for GHG emissions from power plants because power plants

had already been listed as a CAA Section 111(b) regulated source category in 1971 (fossil fuel-fired steam generators) and in 1977 (fossil fuel-fired combustion turbines).

Congress could also define the scope of the “crude oil and natural gas production” source category subject to regulation under CAA Section 111. This legislative approach is illustrated in H.R. 1492, the “Methane Waste Prevention Act of 2021,” which would require EPA to finalize regulations under CAA Section 111 by December 31, 2022 to restrict national methane emissions from oil and gas sector to 65% below 2012 levels by 2025, and 90% by 2030. The bill specifically [defines](#) “covered sources” to include “sources of methane from every segment of oil and natural gas systems, including oil and natural gas production, processing, transmission, distribution, and storage.” In April 2021, the House Natural Resources Committee [voted](#) to advance the legislation.

Other Members of Congress have taken different approaches to address methane emissions that do not rely on the EPA’s authority under the CAA. For example, S. 645, “Methane Emissions Reduction Act of 2021,” would direct the Secretary of the Treasury, working with EPA and the National Oceanic and Atmospheric Administration, to levy a fee on methane emissions from oil and natural gas facilities beginning in 2023. The fees would be transferred to the [National Coastal Resilience Fund](#), which is used to protect coastal communities and habitats for fish and wildlife. Other legislation would work to reduce methane leaks from abandoned wells. S. 1076, the “Revive Economic Growth and Reclaim Orphaned Wells Act of 2021,” would amend the Energy Policy Act of 2005 to require the Secretary of the Interior to establish a program and to provide funds to state and tribal governments to plug, remediate, and reclaim orphaned oil and gas wells and surrounding land.

Author Information

Linda Tsang
Legislative Attorney

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