



MEMORANDUM

June 8, 2021

**To:** Committee on Energy and Commerce Members and Staff

**Fr:** Committee on Energy and Commerce Staff

**Re:** Full Committee Markup of H.J. Res. 34, H.R. 2928, H.R. 2931, H.R. 3078, H.R. 3119, and H.R. 2668

On Thursday, June 10, 2021, at 11 a.m. (EDT), via Cisco Webex online video conferencing, the Committee on Energy and Commerce will hold a markup of the following resolution and five bills:

**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”; **H.R. 2928**, the “Cyber Sense Act of 2021”; **H.R. 2931**, the “Enhancing Grid Security through Public-Private Partnerships Act”; **H.R. 3078**, the “Pipeline and LNG Facility Cybersecurity Preparedness Act”; **H.R. 3119**, the “Energy Emergency Leadership Act”; and **H.R. 2668**, the “Consumer Protection and Recovery Act”.

**I. 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”**

**A. Background**

Methane is a potent greenhouse gas (GHG) that accelerates climate change, is 28 to 36 times more powerful than carbon dioxide when measured over a 100-year period, and about 84 times more powerful when measured over a 20-year period.<sup>1</sup> Methane is the second most prevalent GHG emitted in the United States as a result of human activity, and the oil and gas

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<sup>1</sup> U.S. Environmental Protection Agency, *Understanding Global Warming Potentials* (updated Sept. 9, 2020) ([epa.gov/ghgemissions/understanding-global-warming-potentials](https://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).

sector is the largest industrial source of these emissions. Oil and gas sources also emit significant quantities of other health-harming pollutants, including smog-forming volatile organic compounds (VOC) and hazardous air pollutants (HAP) such as benzene. Frontline communities, children, the elderly, outdoor workers, and individuals with respiratory conditions, are at higher risk of experiencing harmful health outcomes due to exposure to such pollution.<sup>2</sup>

The Clean Air Act (CAA) authorizes the Environmental Protection Agency (EPA) to protect Americans from such dangerous air pollution. Under Section 111(b) EPA must set new source performance standards (NSPS) for categories of industrial sources that cause, or significantly contribute to, air pollution that endangers public health or welfare.<sup>3</sup> In 2012 and 2016, EPA issued rules adding methane emission standards 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.<sup>4</sup> According to EPA, the 2016 Oil and Gas Rule was expected to reduce 510,000 tons of methane, 210,000 tons of VOC, and 3,900 tons of HAP in 2025 alone and produce net climate benefits of \$170 million in the same year.<sup>5</sup>

Despite broad support from industry and public interest groups, in 2020 former EPA Administrator Wheeler issued deregulatory rules that rolled back the 2012 and 2016 standards.<sup>6</sup> Notably, the 2020 Recission 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 to endangerment before

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<sup>2</sup> U.S. Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2019* (2020) (EPA 430-R-21-005); U.S. Environmental Protection Agency, *EPA's Actions to Reduce Methane Emissions from the Oil and Natural Gas Industry: Final Rules and Draft Information Collection Request* ([www.epa.gov/sites/production/files/2016-09/documents/nsps-overview-fs.pdf](http://www.epa.gov/sites/production/files/2016-09/documents/nsps-overview-fs.pdf)).

<sup>3</sup> Clean Air Act § 111(b)(1)(A)-(B).

<sup>4</sup> 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*). The 2016 Oil and Gas Rule established greenhouse gas standards in the form of limitations on methane emissions; *Id* at p. 35840.

<sup>5</sup> *2016 Oil and Gas Rule*.

<sup>6</sup> 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 Recission Rule*). H.J. Res. 34 and S.J. Res. 14 only address the 2020 Recission Rule.

addressing harmful air pollution from a sector already regulated under the CAA. EPA’s own analysis showed that the 2020 Recission Rule would increase methane, VOC, and HAP pollution from the oil and gas sector compared to the previous standards. Because it failed to identify any significant net monetary, climate, or health benefits from the action, EPA estimated the 2020 Recission Rule would generate \$3 million in annual net costs.<sup>7</sup>

## **B. Congressional Review Act, H.J. Res. 34, and S.J. Res. 14**

The Congressional Review Act (CRA) is an oversight tool that Congress may use to overturn a major rule issued by a federal agency.<sup>8</sup> The CRA requires agencies to report on their rulemaking activities to Congress and the Government Accountability Office (GAO), provides Congress with a special set of procedures to consider legislation to overturn those rules, and prevents agencies from issuing the same or rules that are substantially the same without an act of Congress. Upon receipt of the report in Congress, Members can introduce and act on a joint resolution of disapproval using the CRA’s “fast track” procedures.<sup>9</sup>

On March 26, 2021, Reps. DeGette (D-CO), Peters (D-CA), Lamb (D-PA), and 26 original cosponsors, introduced a H.J. Res. 34, a resolution of disapproval for the 2020 Recission Rule.<sup>10</sup> The Senate passed the companion S.J. Res. 14 on April 28, 2021, with a bipartisan vote of 52 yeas to 42 nays.<sup>11</sup> If the joint disapproval resolution is enacted, the 2020 Recission rule “shall be treated as though such rule had never taken effect,”<sup>12</sup> reinstating the methane and VOC pollution reduction requirements established under the 2012 and 2016 Oil and Gas Rules.

## **II. H.R. 2928, THE “CYBER SENSE ACT OF 2021”**

H.R. 2928, the “Cyber Sense act of 2021”, introduced by Reps. Latta (R-OH) and McNerney (D-CA), would require the Secretary of Energy to establish the Cyber Sense Program. This voluntary program would identify cyber-secure products that could be used in the bulk-

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<sup>7</sup> *2020 Recission Rule*, at p. 57065-57067.

<sup>8</sup> 5 U.S.C. §§ 801-808.

<sup>9</sup> Most of the expedited consideration provisions apply only to the Senate. For more background information on the CRA please see: Congressional Research Service, *The Congressional Review Act: Frequently Asked Questions* (Jan. 14, 2020) (R43992); Congressional Research Service, *The Congressional Review Act: In Focus* (Dec. 18, 2018) (IF10023); Congressional Research Service, *Disapproval of Regulations by Congress: Procedure Under the Congressional Review Act* (Oct. 10, 2001) (RL31160).

<sup>10</sup> A companion resolution, S.J. Res. 14, was introduced in the Senate by Sens. Heinrich (D-NM), King (I-ME), Markey (D-MA) and 19 original cosponsors. See H.J. Res. 34.

<sup>11</sup> U.S. Senate, Roll Call Vote on Agreeing to S.J. Res. 14 (Apr. 28, 2021) (52 yeas, 42 nays, 6 not voting).

<sup>12</sup> 5 U.S.C. § 801(f).

power system. In addition to making the Department of Energy (DOE) responsible for promoting cyber-secure products, this legislation requires DOE to determine a testing process for Cyber Sense products and establish a cybersecurity vulnerability reporting process and database. Additionally, H.R. 2928 requires DOE to provide technical assistance to electric utilities, manufacturers, and other relevant stakeholders related to cybersecurity vulnerabilities in products under the Cyber Sense program. The bill requires all cyber-secure products to be reviewed biennially to determine how such products respond to and prevent cyber threats. Lastly, the bill requires DOE to solicit public comment before establishing or altering the Cyber Sense program.

### **III. H.R. 2931, THE “ENHANCING GRID SECURITY THROUGH PUBLIC-PRIVATE PARTNERSHIPS ACT”**

H.R. 2931, the “Enhancing Grid Security through Public-Private Partnerships Act”, introduced by Reps. McNerney and Latta, contains provisions that address physical and cyber security of electric utilities. H.R. 2931 directs the Secretary of Energy, in consultation with states, other federal agencies, and industry stakeholders, to create and implement a program to enhance the physical and cyber security of electric utilities. Among other things, this program would develop voluntary implementation of methods for assessing security vulnerabilities. It would provide cybersecurity training to electric utilities, advance the cybersecurity of utility third-party vendors, and promote sharing of best practices and data collection in the electric sector. The bill requires DOE to submit a report to Congress on cybersecurity and distribution systems. Finally, the bill requires an update to the Interruption Cost Estimate (ICE) Calculator at least once every two years. The ICE Calculator, developed by DOE’s Lawrence Berkley Lab and Nexant, Inc., is an electric reliability planning tool for estimating electricity interruption costs and the benefits associated with reliability improvements.

### **IV. H.R. 3078, THE “PIPELINE AND LNG FACILITY CYBERSECURITY PREPAREDNESS ACT”**

H.R. 3078, the “Pipeline and LNG Facility Cybersecurity Preparedness Act”, introduced by Reps. Upton (R-MI), Rush (D-IL), Chairman Pallone (D-NJ), and Ranking Member Rodgers (R-WA), establishes a program at DOE, in coordination with other Federal agencies, states, and the energy sector, to create policies and procedures to improve the physical and cyber security and resiliency of natural gas transmission and distribution pipelines, hazardous liquid pipelines, and liquefied natural gas (LNG) facilities. The Secretary of Energy would coordinate responses to, and recovery from, physical and cyber incidents affecting the energy sector and develop advanced cybersecurity technologies, perform pilot demonstration projects, and establish workforce development security curricula for pipelines and LNG facilities. Finally, the bill would provide mechanisms to help the energy sector evaluate, prioritize, and improve its security capabilities.

## **V. H.R. 3119, THE “ENERGY EMERGENCY LEADERSHIP ACT”**

H.R. 3119, the “Energy Emergency Leadership Act”, introduced by Reps. Rush and Walberg (R-MI), amends Section 203(a) of the Department of Energy Organization Act to create a new DOE Assistant Secretary position with jurisdiction over all energy emergency and security functions related to energy supply, infrastructure, and cybersecurity. The bill authorizes the new Assistant Secretary to provide, upon request, a state, local, or tribal government with technical assistance, and support and response capabilities with respect to energy security threats, risks, and incidents.

## **VI. H.R. 2668, THE “CONSUMER PROTECTION AND RECOVERY ACT”**

H.R. 2668, the “Consumer Protection and Recovery Act”, introduced by Rep. Cárdenas (D-CA), Chairman Pallone, and Reps. Schakowsky (D-IL), Rush, Castor (D-FL), Trahan (D-MA), McNerney, Clarke (D-NY), Dingell (D-MI), Kelly (D-IL), Soto (D-FL), Rice (D-NY), Craig (D-MN), and Fletcher (D-TX), would amend section 13(b) of the Federal Trade Commission Act to provide the Federal Trade Commission (FTC) with express authority to obtain both injunctive and monetary equitable relief for all violations of those laws it enforces.

The bill would add a new subsection (e) to section 13 of the FTC Act that specifies types of equitable relief the FTC may pursue: restitution for losses, contract reformation and rescission, money refunds, and the return of property. The new subsection (e) also provides the FTC disgorgement authority to seek court orders requiring bad actors repay unjust gains acquired in violation of law. Any amount a court orders to be returned in equitable relief must be offset by any amount the court orders be paid in disgorgement. Any equitable relief under this provision is allowed for violations occurring up to ten years prior to the date a suit is filed, including those violations that occur after the suit is filed. This ten-year period is extended when relief is sought for individuals who are outside of the United States during this period.

The bill would also provide that the FTC may seek temporary restraining orders and preliminary injunctions without bond and that any relief sought under section 13(b) may be for past violations in addition to ongoing and imminent violations. The bill would apply to any currently pending FTC action or proceeding in addition to those commenced on or after, the date of enactment.

On May 27, 2021, the Subcommittee on Consumer Protection and Commerce favorably forwarded H.R. 2688 to the full Committee by a voice vote.