

Biden rolls back Trump-era environmental rule

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Yesterday, President Biden signed a Congressional Review Act resolution effectively reviving an Obama-era rule that imposed methane emissions standards on new, modified and reconstructed oil and gas operations by nixing the Trump-era rule that had rescinded them. The action should not be considered the Biden administration's last word on environmental regulation – proposed new emissions regulations on existing oil and gas operations are expected later this year.

On June 30, 2021, President Biden signed a joint resolution of Congress rescinding the U.S. Environmental Protection Agency's (EPA) September 2020 amendments to two earlier EPA rules promulgated in 2012 and 2016. These two EPA rules imposed New Source Performance Standards (NSPS) for volatile organic compound and methane emissions from the oil and gas industry. These NSPS, particularly those for methane, a greenhouse gas, were a key element of the Obama administration's climate change agenda. The September 2020 amendments targeted by the joint resolution did away with the methane standards and excluded the transportation and storage sectors from the scope of the NSPS. The effect of the joint resolution is that new, modified and reconstructed sources in the oil and gas industry will be subject to the 2012 and 2016 rules in their original form, including the standards applicable to methane emissions.

The joint resolution approved by President Biden was passed pursuant to the 1996 Congressional Review Act (CRA), which allows a new Congress to use special fast-track procedures to invalidate federal agency rules submitted in the last 60 session or legislative days of the previous session of Congress. The resolution managed to garner a modicum of bipartisan support: 12 Republican members of the House of Representatives and three Republican senators joined the Democratic majority to pass the resolution. This is one of three joint resolutions to repeal regulations under the CRA signed by President Biden (the other two do not relate to environmental issues).

This action should not be considered the last word on air emissions regulation on the oil and gas industry by the Biden administration. In a January 21, 2021 executive order, President Biden directed EPA to consider proposing new regulations of VOC and methane emissions from existing operations in the oil and gas sector by September 2021, a regulatory effort that began during the Obama administration but was halted by EPA in March 2017. In addition, in April 2021, the Biden administration announced that EPA may consider NSPS for methane and other pollutants that go beyond the 2012 and 2016 rules.

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