

Congressional Review Act Resolution to Disapprove EPA’s 2020 Oil and Gas Policy Rule

Questions and Answers

U.S. Environmental Protection Agency
Office of Air Quality Planning and Standards
June 30, 2021

On June 30, 2021, President Joseph R. Biden, Jr. signed into law a joint resolution of Congress, adopted under the Congressional Review Act (“CRA”), disapproving the final rule of the Environmental Protection Agency (EPA) titled, “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review,” 85 FR 57018 (Sept. 14, 2020) (“2020 Policy Rule”). The purpose of this document is to provide initial guidance to stakeholders, in the form of questions and answers, about the effect of the CRA resolution.

Background

The 2020 Policy Rule amended the New Source Performance Standards (NSPS) for the Oil and Natural Gas Industry that EPA promulgated in 2012 (77 FR 49489) (Aug. 12, 2012) (“2012 NSPS”) and 2016 (81 FR 35824) (June 3, 2016) (“2016 NSPS”). Specifically, the 2020 Policy Rule rescinded all NSPS (regulating emissions of volatile organic compounds (VOC) and methane) from sources in the natural gas transmission and storage segment of the oil and gas industry and NSPS regulating methane from sources in the industry’s production and processing segments. The rule also interpreted Clean Air Act (CAA) §111 to require, or at least authorize the EPA to require, a pollutant-specific “significant contribution finding” as a predicate to promulgating NSPS for greenhouse gas emissions from source categories. The CRA resolution has the effect of reinstating the 2012 VOC and 2016 VOC and methane standards for the transmission and storage segment, as well as the methane standards for the production and processing segments.

In a separate final rule promulgated shortly after the 2020 Policy Rule, the EPA promulgated several technical amendments to the amended 2016 NSPS. “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration,” 85 FR 57398 (Sept. 15, 2020) (“2020 Technical Rule”). That rule included amendments to address a range of technical and implementation issues in response to administrative petitions for reconsideration and other issues brought to the EPA’s attention since the 2016 NSPS. These include fugitive emissions requirements, provisions to apply for the use of an alternative means of emission limitation, pneumatic pump standards, storage vessel applicability determinations, and engineer certifications. The CRA resolution that disapproved the 2020 Policy Rule did not address the 2020 Technical Rule; therefore, those amendments remain in effect.

On January 20, 2021, President Biden issued Executive Order (“EO”) 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” As part of the Administration’s comprehensive approach to tackling the climate crisis, the order instructs EPA to consider taking two key steps by September 2021:

- Propose a rule to reduce methane emissions from the oil and natural gas sector by suspending, revising, or rescinding the NSPS modifications finalized in 2020.
- Propose new regulations to establish comprehensive standards of performance and emission guidelines for methane and VOC emissions from existing operations in the oil and natural gas sector, including the exploration and production, processing and transmission and storage segments.

EPA intends to comply with the order by issuing a proposed rulemaking in September 2021. As part of this rulemaking, EPA anticipates further explaining the impact of the CRA resolution of disapproval of the 2020 Policy Rule, as well as identifying and proposing appropriate changes to resolve any discrepancies in the regulatory text between the 2016 NSPS and 2020 Technical Rule. These proposed changes, along with the proposal to respond to EO 13990, will be made available for public comment.

Questions and Answers

Since the enactment of the CRA resolution of disapproval of the 2020 Policy Rule, the EPA has received questions from stakeholders subject to the 2012 and 2016 NSPS regarding the resolution’s effect. The most common questions and the EPA’s answers are provided below as initial guidance to stakeholders.

1. What is the primary impact of the CRA resolution of disapproval of the 2020 Policy Rule?

- Under the CRA, a rule that is subject to a joint resolution of disapproval “shall be treated as though such rule had never taken effect.” 5 U.S.C. 801(f)(2). Thus, the primary impact of the disapproval of the 2020 Policy Rule is that the rule is treated as never having taken effect. As a result, the 2012 and 2016 NSPS requirements that the rule repealed came back into effect immediately upon enactment of the joint resolution. Any new, modified, or reconstructed facility that would have been subject to the 2012 or 2016 NSPS (“affected facility”) but for the 2020 Policy Rule will immediately become subject to those NSPS.

2. How does the CRA resolution of disapproval of the 2020 Policy Rule affect sources in the transmission and storage segment of the Oil and Natural Gas Industry?

- As a result of the CRA resolution, sources in the transmission and storage segment that commenced construction, reconstruction, or modification after September 18, 2015 are subject to the methane and VOC requirements in the 2016 NSPS (40 CFR part 60, subpart OOOOa). Further, sources in the transmission and storage segment that commenced construction, reconstruction, or modification after August 23, 2011 and on

or before September 18, 2015 are subject to the VOC requirements in the 2012 NSPS (40 CFR part 60, subpart OOOO). Because the 2020 Technical Rule was finalized after the 2020 Policy Rule (and after transmission and storage was removed from the source category), sources in the transmission and storage segment are not subject to the 2020 Technical Rule and must comply with the 2012 or 2016 NSPS, as applicable. Sources should refer to the regulatory text as it was published in the Federal Register, as specified below:

- 40 CFR part 60, subpart OOOO: [77 FR 49542](#) (Aug. 16, 2012) and amended at [81 FR 35896](#) (Jun. 3, 2016).
- 40 CFR part 60, subpart OOOOa: [81 FR 35898](#) (Jun. 3, 2016) and as amended at [83 FR 10638](#) (Mar. 12, 2018).

3. How does the CRA resolution of disapproval of the 2020 Policy Rule affect sources in the production and processing segments of the Oil and Natural Gas Industry?

- As a result of the CRA resolution, sources in production and processing segments that commenced construction, reconstruction, or modification after September 18, 2015 are subject to the methane requirements in the 2016 NSPS (40 CFR part 60, subpart OOOOa) and the VOC requirements in the 2020 Technical Rule (40 CFR part 60, subpart OOOOa, as amended on September 15, 2020). Sources should refer to the regulatory text as it was published in the Federal Register, as specified below:
 - 40 CFR part 60, subpart OOOOa: [81 FR 35898](#) (Jun. 3, 2016) and as amended at [83 FR 10638](#) (Mar. 12, 2018) for methane standards for the production and processing segments.
 - 40 CFR part 60, subpart OOOOa: As amended at [85 FR 57438](#) (Sept. 15, 2020) for VOC standards for the production and processing segments.

4. My source commenced construction, reconstruction, or modification between September 14, 2020 and June 30, 2021. With what requirements do I need to comply? Does the CRA resolution of disapproval provide for a deadline by which I must comply with the standards?

- While the CRA resolution of disapproval does not explicitly address the deadline by which you must comply with the standards, the CRA states that “[a]ny rule that takes effect and later is made of no force or effect by enactment of a joint resolution ... *shall be treated as through such rule had never taken effect.*” (Emphasis added). Thus sources constructed between September 14, 2020 and June 30, 2021, must comply with all applicable standards as if the 2020 Policy Rule was never in effect. The EPA expects owners and operators of regulated sources to take immediate steps to comply with the applicable 2012 and 2016 standards.
- To determine what the applicable standards are, see responses to questions 2 and 3 above.

- 5. My affected facilities were subject to standards under the 2012 or 2016 NSPS that were rescinded by the 2020 Policy Rule. For example, my transmission compressor station was subject to fugitive emissions monitoring standards for methane and VOC emissions that were rescinded by the 2020 Policy Rule. Does the CRA resolution of disapproval provide for a deadline by which I must comply with the relevant standards of the 2012 or 2016 NSPS?**
- While the CRA resolution of disapproval does not explicitly address the deadline by which you must comply with the standards, the CRA states that “[a]ny rule that takes effect and later is made of no force or effect by enactment of a joint resolution ... *shall be treated as through such rule had never taken effect.*” (Emphasis added). Thus, sources subject to the 2012 or 2016 NSPS that were affected by the 2020 Policy Rule must comply with all applicable standards as if the 2020 Policy Rule was never in effect. The EPA expects owners and operators of regulated sources to take immediate steps to comply with the applicable standards.
- 6. Will the EPA take enforcement against sources that are not in compliance with the CRA-reinstated standards?**
- Facilities subject to the CRA-reinstated standards have an obligation to comply, and those obligations are subject to enforcement. The EPA focuses its enforcement resources on the most problematic oil and gas sources. The EPA is aware of the circumstances and equities created by the CRA resolution of disapproval and will consider such circumstances and equities on a case-by-case basis when determining whether a response to any noncompliance with applicable standards is appropriate.
- 7. Now that the CRA resolution has disapproved the 2020 Policy Rule, the methane requirements of the 2016 NSPS are back in effect. As a result, some sources are subject to requirements for their methane emissions that differ from the requirements for their VOC emissions. Which requirements should these sources comply with?**
- The 2016 NSPS contained identical requirements for the control of methane and VOC emissions. However, the 2020 Policy Rule rescinded the methane requirements from all affected facilities in the production and processing segments, and the 2020 Technical Rule revised the VOC requirements for some of the affected facilities in these same segments. For example, the 2020 Technical Rule created a new subcategory of “low production well sites” for well sites with total production below 15 barrels of oil equivalent per day (boe/day), and exempted such well sites from leak detection and repair requirements for VOC emissions.
 - Because the CRA resolution reinstates the methane standards in the 2016 NSPS while having no effect on the 2020 Technical Rule, the enactment of the CRA resolution will cause some sources in the production and processing segments to be subject to two sets of standards – one for methane based on the 2016 NSPS, and one for VOC based on the 2020 Technical Rule. Low production well sites, for example, are now subject to semiannual methane leak detection and repair requirements under the 2016 NSPS even while they continue to be exempt from leak detection and repair for VOC emissions

under the 2020 Technical Rule. Such affected facilities may either choose to comply with both sets of standards, which in most cases do not conflict, or to comply with the more stringent standards, which are those in the 2016 NSPS. In this case, compliance with the more stringent 2016 NSPS also results in compliance with the 2020 Technical Rule.

- As mentioned previously, EPA anticipates issuing a proposed rule in September 2021 that will further explain the impact of the CRA resolution of disapproval of the 2020 Policy Rule, and propose appropriate changes to resolve any discrepancies in regulatory requirements between the 2016 NSPS and 2020 Technical Rule. These proposed changes, along with the proposal to respond to EO 13990, will be made available for public comment.
- See question 3 for information on where to find relevant regulatory text of the standards.