

The government's efforts to control methane have followed a complicated path, involving three different congressional actions: section 111 of the Clean Air Act, which allows EPA to regulate emissions of greenhouse gases; a congressional override of an earlier regulatory action; and a newer statute that creates a fee on methane emissions. The upshot is to provide legal support for Biden's effort to impose methane emission limits.

The complex history of federal methane action

Given the complexities, it's important to lay out the situation as clearly as possible. The effort to regulate methane emissions under section 111 began under Obama. When the Trump Administration rolled back Obama's emission regulations, Congress intervened, vetoing the Trump rollback. The congressional override of the Trump rollback was based on the Congressional Review Act or CRA. This is sort of a double negative: a rollback of a rollback gets us back to where we started, the Obama regulations. But the congressional override did more than negate the Trump rollback. Under the CRA, a congressional override not only voids the particular regulation in question. It also prevents an agency from ever adopting another rule that is substantially similar. Thus, even if Trump is reelected, he wouldn't be able to roll back the Obama regulations again.

At the end of November, the Biden Administration took the next step. It finalized new [regulations](#) of methane emissions from the oil and gas industry, covering both existing and new sources.

These new emissions regulations are also connected with another methane reduction statute. In the meantime, Congress had launched another strategy to control methane.

The Inflation Reduction Act that imposes a fee on methane emitters rather than directly regulating emissions. Last week, EPA released [proposed regulations](#) relating to the fee. Both the congressional override and the methane fee should bolster the legal case for Biden's proposed methane emission limits.

Why Congress's override of the Trump rollback matters.

In their comments to EPA on the Biden methane rule, commentators repeated the same legal arguments that the Trump Administration had used to justify a rollback. EPA responded that if it accepted those arguments, it would have to copy the Trump Administration's rollback. Given that Congress prohibited it from doing so, EPA argues, Congress necessarily barred consideration of those legal arguments. Congress's disagreement with the Trump Administration's arguments is confirmed by the legislative

history. In short, according to EPA, Congress essentially ratified the legal arguments underlying the Obama methane rule by rejecting those in the Trump rollback.

This is an intriguing argument. CRA resolutions do not formally amend the underlying statute, yet of course they do so to the extent of ruling out a category of future regulations. EPA is trying to incorporate that effect into its legal analysis of the underlying statute. This is a very creative argument. It could have some unintended effects when CRA resolutions are used by conservatives to axe environmental regulations. On the other hand, this particular use of the CRA was unique in that it undid deregulation rather than regulation, which might make a difference.

How the methane fee helps support the legality of the emissions limits.

The provision creating the methane fee also has some implications for the Biden methane regulation, both legally and practically. The Inflation Reduction Act added section 136 to the Clean Air Act. Section 136 imposes a fee on methane emissions greater than a certain threshold that will start at \$900 a ton this year and rise to \$1500 a ton two years from now. Here's the kicker: Section 136 contains an exemption for new plants complying with EPA standards under section 111(b). It also contains a similar exemption for existing plants once every state has implemented EPA regulations for existing operations under section 111(d). A final proviso is that for this exemption to apply, the new rules have to be at least as strong as the Obama EPA's emission limits.

Legally, section 136 is important because it will be very hard for anyone to argue with a straight face that section 111 does not apply to methane or to greenhouse gases in general. And as a practical matter, it creates a practical disincentive to challenge new EPA methane regulations. Doing so would only harm the ability of industry to take advantage of the exemption for regulatory compliance. Section 136 also appropriates \$850 million to assist in reducing methane, something that obviously will weaken arguments that EPA regulations are unreasonable.

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Thus, the new regulation of methane emissions is unique because of this confluence of a new regulation, congressional disapproval of a prior rollback, and a compliance exemption from a fee. It will be fascinating to see how the legal and political battles play out.