

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

**MEMORANDUM**

**October 30, 2015**

**To: Subcommittee on Energy and Power Democratic Members and Staff**

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

**Re: Markup of H.J. Res. 71 and H.J. Res. 72**

On Tuesday, November 2, 2015, at 1:00 p.m. in room 2322 of the Rayburn House Office Building, the Subcommittee on Energy and Power will hold a markup of two disapproval resolutions: H.J. Res. 71 – providing for congressional disapproval of the Environmental Protection Agency’s (EPA) recent final carbon pollution rule for new power plants, and H.J. Res. 72 – providing for congressional disapproval of EPA’s recent final carbon pollution rule for existing power plants, commonly known as the Clean Power Plan.

**I. BACKGROUND**

On August 3, 2015, EPA Administrator Gina McCarthy signed two final rules to regulate carbon pollution from power plants: the Clean Power Plan for existing sources and standards for new, modified and reconstructed sources.<sup>1</sup> The two rules were published in the Federal Register on October 23, 2015. The same day, 26 states filed legal challenges in the U.S. Court of Appeals for the District of Columbia Circuit challenging the final rule for existing power plants.<sup>2</sup>

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<sup>1</sup> For further background information on the two rules, please see the Democratic memo from the October 7, 2015, hearing on “EPA’s CO<sub>2</sub> Regulations for New and Existing Power Plants” (online at [democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/Dem-Memo-EP-CO2-Regulations-2015-10-7.pdf](http://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/Dem-Memo-EP-CO2-Regulations-2015-10-7.pdf)).

<sup>2</sup> For further background information on the legal challenges to the Clean Power Plan, please see the Democratic memo from the October 22, 2015, hearing on “EPA’s CO<sub>2</sub> Regulations for New and Existing Power Plants: Legal Perspectives” (online at [democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/Dem-Memo-EP-CO2-Regs-Day2-2015-10-22.pdf](http://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/Dem-Memo-EP-CO2-Regs-Day2-2015-10-22.pdf)).

On October 26, 2015, Energy and Power Subcommittee Chairman Ed Whitfield (R-KY) introduced resolutions of disapproval for both rules in the House.<sup>3</sup> Companion resolutions have been introduced in the Senate by Senator Mitch McConnell (R-KY).

## II. CONGRESSIONAL REVIEW ACT

The Congressional Review Act (CRA) is an oversight tool that Congress may use to overturn a major rule issued by a federal agency. The CRA requires agencies to report on their rulemaking activities to Congress and provides Congress with a special set of procedures under which to consider legislation to overturn those rules. Upon receipt of the report in Congress, Members then can introduce and take action on a joint resolution of disapproval.<sup>4</sup>

As a practical matter, for purposes of the legislative process in the House, bills and joint resolutions are generally interchangeable. It is anticipated that H.J. Res. 71 and H.J. Res. 72 will follow regular order in the Committee. To avoid the need for a conference on a disapproval resolution, “[o]nce one house of Congress has adopted a joint resolution of disapproval, it is then sent over to the receiving house for consideration,” and “any vote in the receiving house will be on the joint resolution that was sent over.”<sup>5</sup> Most of the expedited consideration provisions of the CRA apply only to the Senate.

If the President vetoes the joint disapproval resolutions, then the final rules cannot take effect for 30 session days, unless the House or Senate votes to sustain the vetoes. If the joint disapproval resolutions are enacted, then EPA would not be able to reissue these rules or rules that are substantially similar.<sup>6</sup> This is particularly important for H.J. Res. 71 and H.J. Res. 72, since it would preclude this administration, or any other, from taking meaningful action to curb carbon emissions from power plants.

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<sup>3</sup> See, Majority Staff, House Committee on Energy and Commerce, *Congressional Review Act Resolutions to Fight Administration’s Cap and Trade Assault* (Oct. 26, 2015) (online at [energycommerce.house.gov/fact-sheet/111bd-congressional-review-act-resolutions#sthash.Ats71m2C.dpuf](http://energycommerce.house.gov/fact-sheet/111bd-congressional-review-act-resolutions#sthash.Ats71m2C.dpuf)).

<sup>4</sup> For more background information on the CRA please see; Congressional Research Service, *The Congressional Review Act: Frequently Asked Questions* (Apr. 17, 2015) (R43992); and Congressional Research Service, *Disapproval of Regulations by Congress: Procedure Under the Congressional Review Act* (Oct. 10, 2001) (RL31160).

<sup>5</sup> Center for Progressive Reform, *The Congressional Review Act: A Primer* (Jan. 10, 2009) (online at [www.progressivereform.org/articles/congressional\\_review\\_act\\_primer.pdf](http://www.progressivereform.org/articles/congressional_review_act_primer.pdf)).

<sup>6</sup> 5 U.S.C. § 801(b).