

AMENDMENT TO
RULES COMMITTEE PRINT 119-33
OFFERED BY MR. HUNT OF TEXAS

At the end of subtitle B of title III, add the following new section:

1 **SEC. 3___. JUDICIAL PROTECTIONS RELATING TO CER-**
2 **TIFIED ENERGY INFRASTRUCTURE SUP-**
3 **PORTING DEPARTMENT OF DEFENSE.**

4 (a) CERTIFICATION.—

5 (1) IN GENERAL.—The Secretary of Defense
6 may certify for purpose of this section any covered
7 infrastructure if the Secretary submits to the Com-
8 mittees on Armed Services of the Senate and the
9 House of Representatives, and files with the clerk of
10 each Federal district court in the district in which
11 the infrastructure is located, a written determination
12 (signed by the Secretary) that the following criteria
13 are met:

14 (A) The infrastructure is necessary to en-
15 sure military readiness, the continuity of fuel
16 supply to the Department of Defense, or related
17 logistical support for the Department.

1 (B) Interference with the construction or
2 operation of the infrastructure would materially
3 impair military readiness, fuel supply chains for
4 the Department of Defense, or the sustainment
5 of military operations.

6 (2) RECORD.—The Secretary shall maintain a
7 contemporaneous written record of the factual basis
8 supporting each certification issued under paragraph
9 (1), which shall constitute the record for purposes of
10 judicial review under subsection (f) and termination
11 proceedings under subsection (d).

12 (b) EFFECT.—A certification under subsection (a)
13 shall take effect upon the date of filing pursuant to such
14 subsection and shall remain in effect unless terminated in
15 accordance with this section.

16 (c) REBUTTABLE PRESUMPTION.—There shall be a
17 rebuttable presumption that infrastructure previously cer-
18 tified under subsection (a) continues to satisfy the criteria
19 of such subsection.

20 (d) TERMINATION.—

21 (1) AUTHORITY TO TERMINATE.—The Sec-
22 retary may terminate a certification under sub-
23 section (a) with respect to infrastructure only if the
24 following criteria are met:

1 (A) The Secretary submits to the Commit-
2 tees on Armed Services of the Senate and the
3 House of Representatives—

4 (i) a written determination that, as
5 the result of a material change in cir-
6 cumstance arising after the effective date
7 of such certification, the infrastructure no
8 longer satisfies the criteria specified in
9 such subsection, including detailed findings
10 supporting such determination and identi-
11 fying any such material change relied
12 upon; and

13 (ii) a certification that such written
14 determination—

15 (I) is based on substantial evi-
16 dence; and

17 (II) is not based, in whole or in
18 part, on any reevaluation, reweighing,
19 or redetermination of any fact or cir-
20 cumstance established as of the effec-
21 tive date of such certification.

22 (B) The Secretary supplements the record
23 supporting such certification maintained under
24 subsection (a)(2) with a description of the sub-
25 stantial evidence specified in subparagraph

1 (A)(ii)(I), which shall constitute part of such
2 record for purposes of judicial review of the ter-
3 mination of such certification.

4 (C) A period of 180 days has elapsed fol-
5 lowing the first date on which the criteria under
6 subparagraphs (A) and (B) are met.

7 (2) CLARIFICATION OF MATERIAL CHANGE IN
8 CIRCUMSTANCES FOR PURPOSES OF TERMI-
9 NATION.—For purposes of paragraph (1), a material
10 change in circumstance does not include—

11 (A) any change in a policy, priority, or
12 strategic assessment of the Secretary or the
13 President; or

14 (B) any change resulting from a State or
15 local government action.

16 (3) EFFECT OF TERMINATION.—The termi-
17 nation of a certification under paragraph (1) shall—

18 (A) constitute final agency action review-
19 able exclusively in the United States Court of
20 Appeals for the District of Columbia Circuit;
21 and

22 (B) be stayed automatically during the
23 pendency of any timely petition for judicial re-
24 view filed not later than 60 days after the date
25 on which the Secretary submits the materials

1 required under paragraph (1)(A) with respect
2 to the termination.

3 (4) PROHIBITION ON TERMINATION DURING
4 PENDING COVERED ACTION.—No certification under
5 subsection (a) may be terminated while a covered ac-
6 tion involving the certified infrastructure remains
7 pending in any Federal or State court.

8 (e) PRIORITY AND EXPEDITED CONSIDERATION.—

9 (1) EXPEDITED REVIEW.—Notwithstanding the
10 time period specified in subsection (h)(2), not later
11 than 15 days after receiving a complete request for
12 certification under subsection (h) from an operator
13 of covered infrastructure that meets one or more of
14 the criteria described in paragraph (2), the Sec-
15 retary shall issue a written determination granting
16 or denying certification under subsection (a).

17 (2) PRIORITY CRITERIA.—The criteria described
18 in this paragraph are that the covered infrastruc-
19 ture, as of the date of the request—

20 (A) is subject to a pending civil action or
21 administrative proceeding by a State, local gov-
22 ernment, Tribal government, or other govern-
23 mental entity seeking to halt or condition its
24 operations;

1 (B) constitutes the sole pathway for do-
2 mestic transportation between a domestic crude
3 oil production facility and a petroleum refinery
4 supplying refined petroleum products to one or
5 more military installations; or

6 (C) is operating pursuant to a Federal
7 order or directive issued within the preceding
8 two years on the basis of military readiness, the
9 continuity of fuel supply to the Department of
10 Defense, or related logistical support for the
11 Department.

12 (f) JUDICIAL REVIEW.—

13 (1) IN GENERAL.—A certification issued under
14 subsection (a) is a final agency action for purposes
15 of chapter 7 of title 5, United States Code, and is
16 reviewable in the United States Court of Appeals for
17 the District of Columbia Circuit. No court other
18 than the United States Court of Appeals for the
19 District of Columbia Circuit shall have jurisdiction
20 to review, enjoin, set aside, suspend, or determine
21 the validity of a certification issued under subsection
22 (a). The court of appeals shall give priority consider-
23 ation to any petition for review of a certification
24 under subsection (a) and shall endeavor to issue a
25 final decision within 180 days of the date on which

1 the petition is filed. A certification issued under sub-
2 section (a) shall remain in full force and effect dur-
3 ing the pendency of any judicial review proceeding.

4 (2) LIMITATION ON STAYS.—No court may stay
5 a certification under subsection (a) except upon a
6 finding by clear and convincing evidence that—

7 (A) the petitioner is substantially likely to
8 prevail on the merits; and

9 (B) the stay would not impair military
10 readiness, the continuity of fuel supply to the
11 Department of Defense, or related logistical
12 support for the Department.

13 (g) LEGAL EFFECT OF CERTIFICATION.—In any cov-
14 ered action, a certification issued under subsection (a)
15 shall constitute conclusive evidence that the Secretary of
16 Defense has determined that interruption of the certified
17 infrastructure would materially impair military readiness,
18 the continuity of fuel supply to the Department of De-
19 fense, or related logistical support for the Department. No
20 officer, employee, or agency of the United States may con-
21 test the existence of the determination reflected in a cer-
22 tification issued under subsection (a) unless such certifi-
23 cation has been terminated pursuant to subsection (d).
24 Nothing in this subsection shall be construed to limit the
25 authority of the Department of Justice to represent the

1 interests of the United States, to enforce Federal law, or
2 to participate in litigation concerning issues not resolved
3 by the certification.

4 (h) REQUEST FOR REVIEW.—

5 (1) AUTHORITY TO REQUEST.—Any operator of
6 covered infrastructure that believes such infrastruc-
7 ture satisfies the criteria specified in subsection (a)
8 may submit to the Secretary a written request for
9 certification of such infrastructure pursuant to such
10 subsection, together with supporting documentation
11 demonstrating how the infrastructure satisfies such
12 criteria.

13 (2) DETERMINATIONS; REQUIREMENTS FOR DE-
14 NIAL.—Not later than 90 days after receiving a
15 complete request under paragraph (1), the Secretary
16 shall issue a written determination granting or deny-
17 ing certification. Any denial shall include a written
18 explanation of the basis for the determination and
19 shall constitute a final agency action reviewable in
20 the United States Court of Appeals for the District
21 of Columbia Circuit pursuant to subsection (f).

22 (i) MODIFIED STANDARD FOR PRELIMINARY INJUNC-
23 TIVE RELIEF AGAINST CERTIFIED INFRASTRUCTURE.—

24 (1) MODIFIED STANDARD.—In any covered ac-
25 tion involving certified infrastructure, no court of

1 the United States and no State court shall issue a
2 temporary restraining order, preliminary injunction,
3 or other form of preliminary equitable relief halting,
4 conditioning, or materially restricting the operation
5 of certified infrastructure unless the court finds, on
6 the basis of clear and convincing evidence presented
7 in the record, that—

8 (A) the party seeking relief is substantially
9 likely to succeed on the merits of its underlying
10 claim;

11 (B) the relief sought would not impair
12 military readiness, the continuity of fuel supply
13 to the Department of Defense, or related
14 logistical support for the Department; and

15 (C) the balance of harms and the public
16 interest clearly favor the issuance of prelimi-
17 nary relief.

18 (2) BURDEN OF PROOF.—The burden of estab-
19 lishing each element required under paragraph (1)
20 rests upon the party seeking preliminary relief. Fail-
21 ure to establish any single element by clear and con-
22 vincing evidence shall be grounds for denial of pre-
23 liminary relief.

24 (3) CERTIFICATION AS CONCLUSIVE EVI-
25 DENCE.—Pursuant to subsection (g), a certification

1 issued under subsection (a) constitutes conclusive
2 evidence that the interruption of any construction of,
3 modification to, or operation of, certified infrastruc-
4 ture would impair military readiness, the continuity
5 of fuel supply to the Department of Defense, or re-
6 lated logistical support for the Department. No
7 party seeking preliminary relief against certified in-
8 frastructure may introduce evidence to rebut or con-
9 tradict this determination. The party seeking relief
10 bears the burden of establishing by clear and con-
11 vincing evidence each other element required under
12 paragraph (1).

13 (4) EXPEDITED REVIEW.—In any covered ac-
14 tion involving certified infrastructure, the United
15 States or the operator of such infrastructure may
16 seek expedited appellate review of any order grant-
17 ing preliminary relief against certified infrastruc-
18 ture. The court of appeals shall give priority consid-
19 eration to such review and shall endeavor to issue a
20 decision within 30 days of the filing of the notice of
21 appeal.

22 (5) DECLARATORY RELIEF.—The modified
23 standard established by this subsection applies to
24 any declaratory judgment or other equitable relief
25 that would have the practical effect of halting or ma-

1 terially conditioning the operation of certified infra-
2 structure, regardless of how such relief is character-
3 ized by the party seeking it.

4 (j) EXPEDITED PROCEEDINGS IN COVERED AC-
5 TIONS.—

6 (1) TRIAL COURT PRIORITY.—In any covered
7 action pending in a United States district court, the
8 court shall accord the proceeding priority on its
9 docket over other civil matters and shall—

10 (A) give priority consideration to any mo-
11 tion for temporary restraining order and en-
12 deavor to issue a ruling at the earliest prac-
13 ticable date, and in no event later than 10 days
14 of filing;

15 (B) give priority consideration to any mo-
16 tion for preliminary injunctive relief and en-
17 deavor to issue a ruling within 30 days of filing;

18 (C) give priority to establishing a sched-
19 uling order and endeavor to do so within 30
20 days of removal or initial filing, providing for
21 completion of all discovery and briefing within
22 one year of filing; and

23 (D) endeavor to conduct any trial or final
24 hearing within 18 months of the date of re-
25 moval or initial filing.

1 (2) APPELLATE EXPEDITED REVIEW.—In any
2 covered action, the court of appeals having appellate
3 jurisdiction shall—

4 (A) give priority consideration to any ap-
5 peal of an order granting or denying prelimi-
6 nary injunctive relief and endeavor to issue a
7 decision within 30 days of the filing of the no-
8 tice of appeal;

9 (B) give priority consideration to any ap-
10 peal of a final judgment in a covered action and
11 endeavor to issue a final decision within 180
12 days of the filing of the notice of appeal; and

13 (C) give priority to covered actions on its
14 docket over other civil matters.

15 (3) STAY STANDARD.—No court of the United
16 States and no State court may stay proceedings in
17 a covered action, or stay any order denying prelimi-
18 nary injunctive relief against certified infrastructure,
19 except upon a finding by clear and convincing evi-
20 dence that the party seeking the stay is substantially
21 likely to prevail on the merits and that the stay
22 would not impair military readiness, the continuity
23 of fuel supply to the Department of Defense, or re-
24 lated logistical support for the Department. A stay
25 of proceedings shall not stay the obligation of any

1 court to accord priority to a covered action under
2 this section.

3 (4) APPLICABILITY.—The requirements of this
4 subsection apply to all covered actions in all Federal
5 courts and, following removal under subsection (k),
6 to all removed State civil actions pending in Federal
7 court.

8 (k) MANDATORY REMOVAL OF STATE CIVIL ACTIONS
9 INVOLVING CERTIFIED INFRASTRUCTURE.—

10 (1) REMOVAL.—Any covered action that is com-
11 menced in a State court shall be removable to the
12 United States district court for the district in which
13 the certified infrastructure is principally located or,
14 at the election of an operator of the certified infra-
15 structure, to the United States district court for the
16 district in which the operator maintains its principal
17 place of business. The operator or the United States
18 may file a notice of removal under this section not
19 later than 60 days after service of the initial plead-
20 ing or any subsequent pleading first raising a claim
21 involving certified infrastructure.

22 (2) EFFECT OF REMOVAL.—Upon removal
23 under this subsection—

1 (A) the State court shall have no further
2 jurisdiction over any aspect of the covered ac-
3 tion;

4 (B) any temporary restraining order, pre-
5 liminary injunction, or other relief issued by the
6 State court prior to removal shall be reviewed
7 de novo by the Federal district court within 10
8 days of removal and shall remain in effect only
9 if the Federal district court affirmatively finds
10 that the requirements of subsection (i)(1) are
11 satisfied; and

12 (C) the Federal district court shall apply
13 Federal law, including the modified injunction
14 standard under subsection (i), to all claims in
15 the covered action.

16 (3) PENDING ACTIONS.—Any covered action
17 pending in State court as of the date of enactment
18 of this section may be removed under this section
19 not later than 90 days after the date of enactment.

20 (4) RIGHT TO INTERVENE.—An operator of cer-
21 tified infrastructure shall be entitled to intervene as
22 a matter of right in any covered action involving
23 such infrastructure pursuant to Rule 24(a)(1) of the
24 Federal Rules of Civil Procedure.

1 (5) EXCLUSIVE VENUE FOR COVERED AC-
2 TIONS.—Any civil action brought in a United States
3 district court by a State, political subdivision of a
4 State, Tribal government, or other governmental en-
5 tity that constitutes a covered action shall be
6 brought in the United States district court for the
7 district in which the certified infrastructure is prin-
8 cipally located or, at the election of an operator of
9 the certified infrastructure, the United States dis-
10 trict court for the district in which the operator
11 maintains its principal place of business. Any such
12 action filed in any other United States district court
13 shall be transferred to such proper court upon mo-
14 tion of such operator or the United States, without
15 regard to the convenience of the parties or witnesses.
16 No United States district court other than a court
17 designated by this subsection shall have jurisdiction
18 over a covered action brought by a governmental en-
19 tity after the date of enactment of this section.

20 (1) ENFORCEMENT.—

21 (1) EXPRESS CAUSE OF ACTION.—An operator
22 of certified infrastructure that is subject to, or faces
23 an imminent threat of, a State or local action that
24 halts, conditions, restricts, or otherwise interferes
25 with the construction or operation of certified infra-

1 structure shall have an express cause of action to
2 enforce any provision of this section and may seek
3 declaratory relief, temporary relief, preliminary re-
4 lief, permanent injunctive relief, specific perform-
5 ance, and such other relief as a court of competent
6 jurisdiction determines appropriate.

7 (2) VENUE.—An operator of certified infra-
8 structure may bring an action under paragraph (1)
9 in any United States district court of competent ju-
10 risdiction, including in the district in which the oper-
11 ator maintains its principal place of business.

12 (3) NO EXHAUSTION REQUIREMENT.—No
13 plaintiff bringing an action under this subsection
14 shall be required to exhaust State administrative
15 remedies prior to seeking relief in Federal court.

16 (4) ATTORNEY FEES.—In any action brought
17 by an operator of certified infrastructure under this
18 section in which the operator substantially prevails,
19 the court shall award the operator reasonable attor-
20 ney fees and costs against the governmental entity
21 that brought or enforced the challenged action.

22 (5) ATTORNEY GENERAL INTERVENTION.—The
23 Attorney General may intervene as a matter of right
24 in any covered action in any Federal or State court
25 in which the United States has an interest in pro-

1 tecting certified infrastructure from State or local
2 governmental interference. The Attorney General
3 shall not intervene in any covered action in a man-
4 ner inconsistent with the conclusive evidence estab-
5 lished under subsection (g).

6 (6) PRESUMPTION OF IRREPARABLE HARM.—In
7 any action brought by an operator of certified infra-
8 structure under this subsection, interference with
9 the construction or operation of certified infrastruc-
10 ture shall constitute irreparable harm for purposes
11 of equitable relief. No operator of certified infra-
12 structure seeking relief under this subsection shall
13 be required to separately demonstrate irreparable
14 harm.

15 (7) STATE OR LOCAL INTERFERENCE.—Subject
16 to paragraph (8), a State or local action that im-
17 poses any condition on the construction or operation
18 of certified infrastructure shall be deemed to inter-
19 fere with such construction or operation if the prac-
20 tical effect of such condition is to halt or substan-
21 tially delay such construction or operation, without
22 regard to whether such action is framed as a condi-
23 tion rather than a prohibition on such construction
24 or operation. Any operator of certified infrastructure
25 that is subject to such a State or local action may

1 seek relief in any United States district court of
2 competent jurisdiction, consistent with this sub-
3 section.

4 (8) FEDERAL FLOOR; STATE-IMPOSED CONDI-
5 TIONS.—

6 (A) IN GENERAL.—For purposes of para-
7 graph (7)—

8 (i) notwithstanding section 510 of the
9 Federal Water Pollution Control Act (33
10 U.S.C. 1370), section 116 of the Clean Air
11 Act (42 U.S.C. 7416), section 3009 of the
12 Solid Waste Disposal Act (42 U.S.C.
13 6929), or any other provision of Federal
14 law authorizing more stringent State re-
15 quirements, a requirement described in
16 subparagraph (B) shall be considered a
17 condition imposed under State or local law,
18 and may not be considered a requirement
19 of Federal law, even if such requirement is
20 contained in, administered under, or en-
21 forced through a permit or program dele-
22 gated, approved, or authorized under Fed-
23 eral law; and

24 (ii) if the imposition of a requirement
25 described in subparagraph (B) has the

1 practical effect described in paragraph (7)
2 and an operator of certified infrastructure
3 that is subject to the State or local action
4 imposing such requirement seeks relief in a
5 United States district court of competent
6 jurisdiction as provided for under such
7 paragraph—

8 (I) the court shall identify the
9 specific requirement resulting in such
10 effect;

11 (II) the State or local govern-
12 ment concerned shall bear the burden
13 of demonstrating, as a defense for
14 purposes of enforcement under this
15 subsection, that such requirement is a
16 requirement compelled by Federal law;
17 and

18 (III) if such State or local gov-
19 ernment does not demonstrate that
20 such requirement is compelled by Fed-
21 eral law consistent with such burden,
22 the rule of construction under sub-
23 section (m)(3) may not preserve such
24 requirement or serve as a defense for

1 purposes of enforcement under this
2 subsection.

3 (B) REQUIREMENT DESCRIBED.—A re-
4 quirement described in this subparagraph is a
5 requirement—

6 (i) that is imposed by a State or local
7 government;

8 (ii) that is more stringent than, or is
9 in addition to, a requirement compelled by
10 Federal law; and

11 (iii) with respect to which the State or
12 local government lacks discretion to waive
13 or decline to impose.

14 (9) CONTINUITY OF OPERATIONS.—

15 (A) IN GENERAL.—During the period in
16 which a certification under subsection (a) is in
17 effect with respect to certified infrastructure, no
18 permit, license, certification, or other authoriza-
19 tion of a State or local government may be re-
20 quired as a condition of the operation, mainte-
21 nance, repair, or restart of the certified infra-
22 structure, to the extent that the requirement to
23 obtain or maintain such permit, license, certifi-
24 cation, or authorization would have the prac-
25 tical effect described in paragraph (7).

1 (B) RULE OF CONSTRUCTION.—Nothing in
2 this paragraph shall be construed as limiting or
3 otherwise affecting—

4 (i) any permit, license, or authoriza-
5 tion required under Federal law, or the au-
6 thority of any Federal agency to issue,
7 condition, enforce, or revoke any such per-
8 mit, license, or authorization;

9 (ii) any requirement of a State or
10 local permit that is a Federal minimum re-
11 quirement within the meaning of para-
12 graph (8); or

13 (iii) the application of any State or
14 local permit requirement to infrastructure
15 (or to operations, maintenance, repair, or
16 restart thereof) other than to certified in-
17 frastructure (or to operations, mainte-
18 nance, repair, or restart thereof).

19 (m) RULE OF CONSTRUCTION.—Nothing in this sec-
20 tion shall be construed—

21 (1) to create any Federal property interest in
22 any certified infrastructure;

23 (2) to authorize the Secretary of Defense to di-
24 rect the operations of any certified infrastructure or
25 to impose operational requirements on an operator

1 of certified infrastructure beyond those imposed by
2 applicable Federal law;

3 (3) to preempt any Federal environmental,
4 pipeline safety, or occupational health and safety law
5 applicable to certified infrastructure, except as pro-
6 vided in subsection (l)(8)(A)(ii)(III);

7 (4) to affect any pending Federal criminal pro-
8 ceeding;

9 (5) to limit the authority of a Federal court to
10 issue injunctive relief in an action brought by the
11 United States or an operator to enforce Federal law
12 or protect Federal interests related to certified infra-
13 structure; or

14 (6) to authorize the Secretary of Defense, the
15 Attorney General, or any court to halt, restrict, con-
16 dition, or compel the operation of any infrastructure.

17 (n) DEFINITIONS.—In this section:

18 (1) The term “certified infrastructure” means
19 any covered infrastructure that the Secretary of De-
20 fense has certified under subsection (a).

21 (2) The term “covered action” means any civil
22 action, special proceeding, administrative enforce-
23 ment proceeding, application for equitable relief, or
24 petition for judicial review of a Federal agency deci-
25 sion, brought by a State, political subdivision of a

1 State, Tribal government, other governmental entity,
2 or any private party, that seeks to halt, condition,
3 vacate, remand, or otherwise interfere with the con-
4 struction, operation, or Federal authorization of cer-
5 tified infrastructure.

6 (3) The term “covered infrastructure” means
7 domestic energy infrastructure located within the
8 United States that—

9 (A) consists of crude oil or refined petro-
10 leum product pipelines, natural gas pipelines,
11 crude oil or natural gas production or proc-
12 essing facilities, or storage or transportation in-
13 frastructure associated with any such matter;
14 and

15 (B) provides, or has the capacity to pro-
16 vide, crude oil, natural gas, refined petroleum
17 products, or fuel to one or more military instal-
18 lations or operations of the Department of De-
19 fense, including through the delivery to a refin-
20 ery or processing facility from which fuel is
21 supplied to such an installation or operation.

22 (4) The term “operator” means an entity hold-
23 ing operating authority over infrastructure under ap-

- 1 plicable Federal permits and authorizations, and any
- 2 successor operator.

