

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—

24 (A) the Secretary submits to the Commit-
25 tees on Armed Services of the Senate and the

1 House of Representatives a written determina-
2 tion, based on substantial evidence in the record
3 for such certification under subsection (a)(2)
4 that the infrastructure no longer satisfies the
5 criteria specified in such subsection, including
6 detailed findings supporting such determina-
7 tion; and

8 (B) a period of 180 days has elapsed fol-
9 lowing the date of such submission.

10 (2) EFFECT OF TERMINATION.—The termi-
11 nation of a certification under paragraph (1) shall—

12 (A) constitute final agency action review-
13 able exclusively in the United States Court of
14 Appeals for the District of Columbia Circuit;
15 and

16 (B) be stayed automatically during the
17 pendency of any timely petition for judicial re-
18 view filed not later than 60 days after the date
19 on which the Secretary submits the written de-
20 termination under paragraph (1)(A) with re-
21 spect to the termination.

22 (3) PROHIBITION ON TERMINATION DURING
23 PENDING COVERED ACTION.—No certification under
24 subsection (a) may be terminated while a covered ac-

1 tion involving the certified infrastructure remains
2 pending in any Federal or State court.

3 (e) PRIORITY AND EXPEDITED CONSIDERATION.—

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

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

15 (A) is subject to a pending civil action or
16 administrative proceeding by a State, local gov-
17 ernment, Tribal government, or other govern-
18 mental entity seeking to halt or condition its
19 operations;

20 (B) constitutes the sole pathway for do-
21 mestic transportation between a domestic crude
22 oil production facility and a petroleum refinery
23 supplying refined petroleum products to one or
24 more military installations; or

1 (C) is operating pursuant to a Federal
2 order or directive issued within the preceding
3 two years on the basis of military readiness, the
4 continuity of fuel supply to the Department of
5 Defense, or related logistical support for the
6 Department.

7 (f) JUDICIAL REVIEW.—

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

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

4 (A) the petitioner is substantially likely to
5 prevail on the merits; and

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

10 (g) LEGAL EFFECT OF CERTIFICATION.—In any cov-
11 ered action, a certification issued under subsection (a)
12 shall constitute conclusive evidence that the Secretary of
13 Defense has determined that interruption of the certified
14 infrastructure would materially impair military readiness,
15 the continuity of fuel supply to the Department of De-
16 fense, or related logistical support for the Department. No
17 officer, employee, or agency of the United States may con-
18 test the existence of the determination reflected in a cer-
19 tification issued under subsection (a) unless such certifi-
20 cation has been terminated pursuant to subsection (d).
21 Nothing in this subsection shall be construed to limit the
22 authority of the Department of Justice to represent the
23 interests of the United States, to enforce Federal law, or
24 to participate in litigation concerning issues not resolved
25 by the certification.

1 (h) REQUEST FOR REVIEW.—

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

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

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

21 (1) MODIFIED STANDARD.—In any covered ac-
22 tion involving certified infrastructure, no court of
23 the United States and no State court shall issue a
24 temporary restraining order, preliminary injunction,
25 or other form of preliminary equitable relief halting,

1 conditioning, or materially restricting the operation
2 of certified infrastructure unless the court finds, on
3 the basis of clear and convincing evidence presented
4 in the record, that—

5 (A) the party seeking relief is substantially
6 likely to succeed on the merits of its underlying
7 claim;

8 (B) the relief sought would not impair the
9 supply of refined petroleum products to the De-
10 partment of Defense; and

11 (C) the balance of harms and the public
12 interest clearly favor the issuance of prelimi-
13 nary relief.

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

20 (3) CERTIFICATION AS CONCLUSIVE EVI-
21 DENCE.—Pursuant to subsection (g), a certification
22 issued under subsection (a) constitutes conclusive
23 evidence that the interruption of any construction of,
24 modification to, or operation of, certified infrastruc-
25 ture would impair military readiness, the continuity

1 of fuel supply to the Department of Defense, or re-
2 lated logistical support for the Department. No
3 party seeking preliminary relief against certified in-
4 frastructure may introduce evidence to rebut or con-
5 tradict this determination. The party seeking relief
6 bears the burden of establishing by clear and con-
7 vincing evidence each other element required under
8 paragraph (1).

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

18 (5) DECLARATORY RELIEF.—The modified
19 standard established by this subsection applies to
20 any declaratory judgment or other equitable relief
21 that would have the practical effect of halting or ma-
22 terially conditioning the operation of certified infra-
23 structure, regardless of how such relief is character-
24 ized by the party seeking it.

1 (j) EXPEDITED PROCEEDINGS IN COVERED AC-
2 TIONS.—

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

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

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

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

20 (D) endeavor to conduct any trial or final
21 hearing within 18 months of the date of re-
22 moval or initial filing.

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

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

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

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

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

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

6 (k) MANDATORY REMOVAL OF STATE CIVIL ACTIONS
7 INVOLVING CERTIFIED INFRASTRUCTURE.—

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

20 (2) EFFECT OF REMOVAL.—Upon removal
21 under this subsection—

22 (A) the State court shall have no further
23 jurisdiction over any aspect of the covered ac-
24 tion;

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

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

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

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

22 (5) EXCLUSIVE VENUE FOR COVERED AC-
23 TIONS.—Any civil action brought in a United States
24 district court by a State, political subdivision of a
25 State, Tribal government, or other governmental en-

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

16 (1) ENFORCEMENT.—

17 (1) EXPRESS CAUSE OF ACTION.—An operator
18 of certified infrastructure that is subject to, or faces
19 an imminent threat of, a State or local action that
20 halts, conditions, restricts, or otherwise interferes
21 with the construction or operation of certified infra-
22 structure shall have an express cause of action to
23 enforce any provision of this section and may seek
24 declaratory relief, temporary relief, preliminary re-
25 lief, permanent injunctive relief, specific perform-

1 ance, and such other relief as a court of competent
2 jurisdiction determines appropriate.

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

8 (3) NO EXHAUSTION REQUIREMENT.—No
9 plaintiff bringing an action under this subsection
10 shall be required to exhaust State administrative
11 remedies prior to seeking relief in Federal court.

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

18 (5) ATTORNEY GENERAL INTERVENTION.—The
19 Attorney General may intervene as a matter of right
20 in any covered action in any Federal or State court
21 in which the United States has an interest in pro-
22 tecting certified infrastructure from State or local
23 governmental interference. The Attorney General
24 shall not intervene in any covered action in a man-

1 ner inconsistent with the estoppel established under
2 subsection (g).

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

12 (7) STATE OR LOCAL INTERFERENCE.—A State
13 or local action that imposes any condition on the
14 construction or operation of certified infrastructure
15 shall be deemed to interfere with such construction
16 or operation if the practical effect of such condition
17 is to halt or substantially delay such construction or
18 operation, without regard to whether such action is
19 framed as a condition rather than a prohibition on
20 such construction or operation. Any operator of cer-
21 tified infrastructure that is subject to such a State
22 or local action may seek relief in any United States
23 district court of competent jurisdiction, consistent
24 with this subsection.

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

3 (1) to create any Federal property interest in
4 any certified infrastructure;

5 (2) to authorize the Secretary of Defense to di-
6 rect the operations of any certified infrastructure or
7 to impose operational requirements on an operator
8 of certified infrastructure beyond those imposed by
9 applicable Federal law;

10 (3) to preempt any Federal environmental,
11 pipeline safety, or occupational health and safety law
12 applicable to certified infrastructure;

13 (4) to affect any pending Federal criminal pro-
14 ceeding;

15 (5) to limit the authority of a Federal court to
16 issue injunctive relief in an action brought by the
17 United States or an operator to enforce Federal law
18 or protect Federal interests related to certified infra-
19 structure; or

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

23 (n) DEFINITIONS.—In this section:

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

4 (2) The term “covered action” means any civil
5 action, special proceeding, administrative enforce-
6 ment proceeding, application for equitable relief, or
7 petition for judicial review of a Federal agency deci-
8 sion, brought by a State, political subdivision of a
9 State, Tribal government, other governmental entity,
10 or any private party, that seeks to halt, condition,
11 vacate, remand, or otherwise interfere with the con-
12 struction, operation, or Federal authorization of cer-
13 tified infrastructure.

14 (3) The term “covered infrastructure” means
15 domestic energy infrastructure located within the
16 United States, including crude oil and refined petro-
17 leum product pipelines, natural gas pipelines, crude
18 oil and natural gas production and processing facili-
19 ties, and associated storage and transportation in-
20 frastructure, that provides or has the capacity to
21 provide crude oil, natural gas, refined petroleum
22 products, or fuel to one or more military installa-
23 tions or operations of the Department of Defense.

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

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

