

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 2401) TO REQUIRE ANALYSES OF THE CUMULATIVE AND INCREMENTAL IMPACTS OF CERTAIN RULES AND ACTIONS OF THE ENVIRONMENTAL PROTECTION AGENCY, AND FOR OTHER PURPOSES

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SEPTEMBER 20, 2011.—Referred to the House Calendar and ordered to be printed

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Mr. BISHOP of Utah, from the Committee on Rules,  
submitted the following

R E P O R T

[To accompany H. Res. 406]

The Committee on Rules, having had under consideration House Resolution 406, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 2401, the Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011, under a structured rule. The resolution provides two hours of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Energy and Commerce. The resolution waives all points of order against consideration of the bill. The resolution provides that the amendment in the nature of a substitute recommended by the Committee on Energy and Commerce now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The resolution waives all points of order against the committee amendment in the nature of a substitute. The resolution further makes in order only those amendments printed in this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against the amendments printed in this report are waived. Finally, the resolution provides one motion to recommit with or without instructions.

## EXPLANATION OF WAIVERS

Although the resolution waives all points of order against consideration of the bill, the Committee is not aware of any points of order against its consideration. The waiver of all points of order is prophylactic.

Although the resolution waives all points of order against the committee amendment in the nature of a substitute to H.R. 2401, the Committee is not aware of any points of order against the amendment in the nature of a substitute. The waiver of all points of order is prophylactic.

Although the resolution waives all points of order against the amendments printed in this report, the Committee is not aware of any points of order against the amendments. The waiver of all points of order is prophylactic in nature.

## SUMMARY OF AMENDMENTS MADE IN ORDER

1. Rush (IL): Would add the Chair of the Council on Environmental Quality, the Secretary of Health and Human Services, as well as the Director of the Centers for Disease Control and Prevention, among others, to the interagency council that this bill would create. Additionally, the amendment would direct the committee to look at important health impacts on the most vulnerable sub-populations that would be affected by EPA's proposed rules. (10 minutes)

2. McNerney (CA): Would add the effect on clean energy jobs and clean energy companies, including those that export clean energy technology, to the items to be considered in the analyses required by the bill. (10 minutes)

3. Moore, Gwen (WI): Would ensure that the study will analyze the impact that a rule or action could have on low-income communities and public health. (10 minutes)

4. Capps (CA): Would require the committee to include in its analyses an estimate of the incidence of birth and developmental defects and infant mortality that would result from a delay to covered rules and covered actions under the bill. (10 minutes)

5. Kinzinger (IL), Gonzalez (TX): Would add upcoming EPA gasoline regulations to the list of measures to be analyzed for their cumulative impact on energy prices, jobs, and American competitiveness. (10 minutes)

6. Dent (PA): Would add the U.S. Environmental Protection Agency's (EPA) National Emission Standards for Hazardous Air Pollutants (NESHAP) from the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants to the Covered Rules within the bill. (10 minutes)

7. Hastings, Alcee (FL): Would exclude from the committee's jurisdiction all rules and regulations that undergo a cost-benefit analysis as a part of existing regulatory requirements. (10 minutes)

8. Connolly (VA): Would require the committee to study policies which will lead to creation of American jobs in the clean energy sector. (10 minutes)

9. Jackson Lee (TX): Would extend the public comment period from 90 days to 120 days. (10 minutes)

10. Whitfield (KY): Would provide that the Cross State Air Pollution Rule has no legal force or effect, and directs EPA to continue

to apply the Clean Air Interstate Rule (CAIR) for at least 3 years until after the study in the underlying bill is complete. The amendment also requires that the proposed Utility Maximum Achievable Control Technology (MACT) rule has no legal force and effect and that any subsequent Utility MACT rule be issued no sooner than 1 year after the study in the underlying bill is complete. If reissuing the rule, EPA is required to ensure that MACT standards are achievable in practice and that the compliance period is at least 5 years. (10 minutes)

11. Latta (OH): Would update the Clean Air Act's criteria for what factors can be considered when promulgating National Ambient Air Quality Standards (NAAQS). Specifically, it would allow the EPA Administrator to consider feasibility and cost when setting these standards, which would negate the effect of a 2001 Supreme Court ruling that held implementation costs cannot be considered when setting NAAQS. (10 minutes)

12. Richardson (CA): Would strike the offset provision of H.R. 2401, which would reduce funding to the Diesel Emission Reductions Act. (10 minutes)

TEXT OF AMENDMENTS TO BE MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE RUSH OF ILLINOIS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 2(b)(3), insert “and the Deputy Secretary of Labor” before the period.

In section 2(b)(4), insert “and the Deputy Secretary of Energy” before the period.

At the end of section 2(b), add the following:

(12) The Chair of the Council on Environmental Quality.

(13) The Secretary of the Interior.

(14) The Secretary of Health and Human Services.

(15) The Director of the Centers for Disease Control and Prevention.

(16) The Director of the National Institute of Environmental Health Sciences.

Amend section 2(c) to read as follows:

(c) CHAIR.—The Secretary of Commerce and the Chair of the Council on Environmental Quality shall serve as co-chairs of the Committee. In carrying out the functions of the Chair, the co-chairs shall consult with the members of the Committee.

In section 2(d), insert “stakeholders and relevant experts, including” after “reports issued by,”.

In section 3(b)(1), insert after subparagraph (D) the following (and redesignate accordingly):

(E) any resulting change in the incidences of asthma and asthma attacks and other pulmonary disease;

(F) any resulting change in the occurrence of birth and developmental defects;

(G) any resulting change in the occurrence of premature mortality;

(H) any resulting change in the occurrence of other adverse health effects;

(I) the effect on clean energy jobs;

(J) the effect on clean energy companies, including companies that export clean energy technology;

(K) the effect on regional air quality, including any resulting change in the impairment of visibility, due to reduced pollution;

(L) the effect on the water quality of lakes and streams;

(M) any resulting change in the number of work days missed;

(N) any resulting change in the number of school days missed;

(O) any resulting change in the use of emergency medical services;

In section 3(b)(4), insert after subparagraph (D) the following (and redesignate accordingly):

(E) vulnerable subpopulations, including the elderly, pregnant women, and populations with pulmonary disease;

(F) the environment, including impacts on global climate change;

(G) development of infants and children;

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MCNERNEY OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 6, line 22, strike “; and” and insert a semicolon.

Page 6, line 24, strike the period and insert “; and”.

Page 6, after line 24, insert the following new subparagraph:

(G) the effect on clean energy jobs and clean energy companies, including companies that export clean energy technology.

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MOORE OF WISCONSIN OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 7, after line 10, insert the following new subparagraphs (and redesignate accordingly):

(E) low-income communities;

(F) public health;

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CAPPS OF CALIFORNIA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 7, after line 15, insert the following new paragraph:

(5) Estimates of the impacts of delaying the covered rules and covered actions on the incidence of birth and developmental defects and infant mortality.

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5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KINZINGER OF ILLINOIS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of section 3(e)(2), add the following:

(D) Any rule addressing fuels under title II of the Clean Air Act (42 U.S.C. 7521 et seq.) as described in the Unified Agenda of Federal Regulatory and Deregulatory Actions under Regulatory Identification Number 2060-AQ86, or

any substantially similar rule, including any rule under section 211(v) of the Clean Air Act (42 U.S.C. 7545(v)).

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6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DENT OF PENNSYLVANIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 9, after line 20, insert the following:

(I) “National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants”, published at 75 Fed. Reg. 54970 (September 9, 2010).

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7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HASTINGS OF FLORIDA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 10, after line 12, insert the following new subsection (and redesignate accordingly):

(f) EXCLUSION FROM REVIEW.—Notwithstanding subsection (e), the Committee may not include in the analyses conducted under section 3 consideration of any rule or guideline promulgated in compliance with Executive Order 12866 (58 Fed. Reg. 51735, relating to regulatory planning and review) or the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

Beginning on page 11, line 17, strike section 5 (and redesignate accordingly).

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8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CONNOLLY OF VIRGINIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 10, after line 24, insert the following:

(g) ADDITIONAL ANALYSES.—The Committee shall conduct or commission studies to identify pollution control policies that should be adopted and implemented by the United States to provide domestic job growth and ensure that the Nation is internationally competitive in the \$5 trillion global energy industry for clean energy technology development and manufacturing.

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9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON LEE OF TEXAS OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 11, line 10, strike “90” and insert “120”.

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10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WHITFIELD OF KENTUCKY OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike section 5 and insert the following:

**SEC. 5. ADDITIONAL PROVISIONS RELATING TO CERTAIN RULES.**

(a) CROSS-STATE AIR POLLUTION RULE/TRANSPORT RULE.—

(1) EARLIER RULES.—The rule entitled “Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals”, published at 76 Fed. Reg. 48208 (August 8, 2011), and any successor or substan-

tially similar rule, shall be of no force or effect, and shall be treated as though such rule had never taken effect.

(2) CONTINUED APPLICABILITY OF CLEAN AIR INTERSTATE RULE.—In place of any rule described in paragraph (1), the Administrator of the Environmental Protection Agency (in this section referred to as the “Administrator”) shall continue to implement the Clean Air Interstate Rule.

(3) ADDITIONAL RULEMAKINGS.—

(A) ISSUANCE OF NEW RULES.—The Administrator—

(i) shall not issue any proposed or final rule under section 110(a)(2)(D)(i)(I) or section 126 of the Clean Air Act (42 U.S.C. 7410(a)(2)(D)(i)(I), 7426) relating to national ambient air quality standards for ozone or particulate matter (including any modification of the Clean Air Interstate Rule) before the date that is 3 years after the date on which the Committee submits the final report under section 4(c); and

(ii) in issuing any rule described in clause (i), shall base the rule on actual monitored (and not modeled) data and shall, notwithstanding section 110(a)(2)(D)(i)(I), allow the trading of emissions allowances among entities covered by the rule irrespective of the States in which such entities are located.

(B) IMPLEMENTATION SCHEDULE.—In promulgating any final rule described in subparagraph (A)(i), the Administrator shall establish a date for State implementation of the standards established by such final rule that is not earlier than 3 years after the date of publication of such final rule.

(4) DEFINITION OF CLEAN AIR INTERSTATE RULE.—For purposes of this section, the term “Clean Air Interstate Rule” means the Clean Air Interstate Rule and the rule establishing Federal Implementation Plans for the Clean Air Interstate Rule as promulgated and modified by the Administrator (70 Fed. Reg. 25162 (May 12, 2005), 71 Fed. Reg. 25288 (April 28, 2006), 72 Fed. Reg. 55657 (Oct. 1, 2007), 72 Fed. Reg. 59190 (Oct. 19, 2007), 72 Fed. Reg. 62338 (Nov. 2, 2007), 74 Fed. Reg. 56721 (Nov. 3, 2009)).

(b) STEAM GENERATING UNIT RULES.—

(1) EARLIER RULES.—The proposed rule entitled “National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial- Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units” published at 76 Fed. Reg. 24976 (May 3, 2011), and any final rule that is based on such proposed rule and is issued prior to the date of the enactment of this Act, shall be of no force and effect, and shall be treated as though such proposed or final rule had never been issued. In conducting analyses under section 3(a), the Committee shall analyze the rule described in section 3(e)(1)(E) (including any successor or substantially similar rule) as if the preceding sentence did not apply to such rule.

(2) PROMULGATION OF FINAL RULES.—In place of the rules described in paragraph (1), the Administrator shall—

(A) issue regulations establishing national emission standards for coal-and oil-fired electric utility steam generating units under section 112 of the Clean Air Act (42 U.S.C. 7412) with respect to each hazardous air pollutant for which the Administrator finds such regulations are appropriate and necessary pursuant to subsection (n)(1)(A) of such section;

(B) issue regulations establishing standards of performance for fossil-fuel-fired electric utility, industrial-commercial-institutional, and small industrial-commercial-institutional steam generating units under section 111 of the Clean Air Act (42 U.S.C. 111); and

(C) issue the final regulations required by subparagraphs (A) and (B)—

(i) after issuing proposed regulations under such subparagraphs;

(ii) after consideration of the final report submitted under section 4(c); and

(iii) not earlier than the date that is 12 months after the date on which the Committee submits such report to the Congress, or such later date as may be determined by the Administrator.

(3) COMPLIANCE PROVISIONS.—

(A) ESTABLISHMENT OF COMPLIANCE DATES.—In promulgating the regulations under paragraph (2), the Administrator—

(i) shall establish a date for compliance with the standards and requirements under such regulations that is not earlier than 5 years after the effective date of the regulations; and

(ii) in establishing a date for such compliance, shall take into consideration—

(I) the costs of achieving emissions reductions;

(II) any non-air quality health and environmental impact and energy requirements of the standards and requirements;

(III) the feasibility of implementing the standards and requirements, including the time needed to—

(aa) obtain necessary permit approvals; and

(bb) procure, install, and test control equipment;

(IV) the availability of equipment, suppliers, and labor, given the requirements of the regulations and other proposed or finalized regulations; and

(V) potential net employment impacts.

(B) NEW SOURCES.—With respect to the regulations promulgated pursuant to paragraph (2)—

(i) the date on which the Administrator proposes a regulation pursuant to paragraph (2)(A) establishing an emission standard under section 112 of the Clean Air Act (42 U.S.C. 7412) shall be treated as the date on which the Administrator first proposes such a regulation for purposes of applying the definition of a new

source under section 112(a)(4) of such Act (42 U.S.C. 7412(a)(4));

(ii) the date on which the Administrator proposes a regulation pursuant to paragraph (2)(B) establishing a standard of performance under section 111 of the Clean Air Act (42 U.S.C. 7411) shall be treated as the date on which the Administrator proposes such a regulation for purposes of applying the definition of a new source under section 111(a)(2) of such Act (42 U.S.C. 7411(a)(2));

(iii) for purposes of any emission standard or limitation applicable to electric utility steam generating units, the term “new source” means a stationary source for which a preconstruction permit or other preconstruction approval required under the Clean Air Act (42 U.S.C. 7401 et seq.) has been issued after the effective date of such emissions standard or limitation; and

(iv) for purposes of clause (iii), the date of issuance of a preconstruction permit or other preconstruction approval is deemed to be the date on which such permit or approval is issued to the applicant irrespective of any administrative or judicial review occurring after such date.

(C) **RULE OF CONSTRUCTION.**—Nothing in this subsection shall be construed to restrict or otherwise affect the provisions of paragraphs (3)(B) and (4) of section 112(i) of the Clean Air Act (42 U.S.C. 7412(i)).

(4) **OTHER PROVISIONS.**—

(A) **ESTABLISHMENT OF STANDARDS ACHIEVABLE IN PRACTICE.**—The regulations promulgated pursuant to paragraph (2)(A) of this section shall apply section 112(d)(3) of the Clean Air Act (42 U.S.C. 7412(d)(3)) in accordance with the following:

(i) **NEW SOURCES.**—With respect to new sources:

(I) The Administrator shall identify the best controlled similar source for each source category or subcategory.

(II) The best controlled similar source for a category or subcategory shall be the single source that is determined by the Administrator to be the best controlled, in the aggregate, for all of the hazardous air pollutants for which the Administrator intends to issue standards for such source category or subcategory, under actual operating conditions, taking into account the variability in actual source performance, source design, fuels, controls, ability to measure pollutant emissions, and operating conditions.

(ii) **EXISTING SOURCES.**—With respect to existing sources:

(I) The Administrator shall identify one group of sources that constitutes the best performing 12 percent of existing sources for each source category or subcategory.



(II) The group constituting the best performing 12 percent of existing sources for a category or subcategory shall be the single group that is determined by the Administrator to be the best performing, in the aggregate, for all of the hazardous air pollutants for which the Administrator intends to issue standards for such source category or subcategory, under actual operating conditions, taking into account the variability in actual source performance, source design, fuels, controls, ability to measure pollutant emissions, and operating conditions.

(B) REGULATORY ALTERNATIVES.—For the regulations promulgated pursuant to paragraph (2) of this section, from among the range of regulatory alternatives authorized under the Clean Air Act (42 U.S.C. 7401 et seq.), including work practice standards under section 112(h) of such Act (42 U.S.C. 7412(h)), the Administrator shall impose the least burdensome, consistent with the purposes of such Act and Executive Order 13563 published at 76 Fed. Reg. 3821 (January 21, 2011).

Strike subparagraph (A) of section 3(e)(1) and insert the following:

(A) The Clean Air Interstate Rule (as defined in section 5(a)(4)).

Strike subparagraph (B) of section 3(e)(1) and insert the following:

(E) “National Ambient Air Quality Standards for Ozone”, published at 73 Fed. Reg. 16436 (March 27, 2008).

On page 13, line 17, in the matter before paragraph (1) in section 6(a), strike “for fiscal year 2012”.

On page 13, line 18, in section 6(a)(1), insert “for fiscal year 2012,” before “\$3,000,000”.

Strike paragraph (2) in section 6(a) and insert the following:

- (2) to the Environmental Protection Agency—  
 (A) for fiscal year 2012, \$1,000,000; and  
 (B) for fiscal year 2013, \$500,000.

Strike subsection (b) in section 6 and insert the following:

(b) OFFSET.—Effective October 1, 2011, section 797(a) of the Energy Policy Act of 2005, as amended by section 2(e) of the Diesel Reduction Act of 2010 (Public Law 111–364), is amended—

- (1) by striking “2012” and inserting “2014”;  
 (2) by inserting “\$45,500,000 for fiscal year 2012, \$49,500,000 for fiscal year 2013, and” after “to carry out this subtitle”.

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11. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LATTA OF OHIO OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

After section 5, insert the following new section (and redesignate the subsequent section accordingly):

**SEC. 6. CONSIDERATION OF FEASIBILITY AND COST IN ESTABLISHING NATIONAL AMBIENT AIR QUALITY STANDARDS.**

In establishing any national primary or secondary ambient air quality standard under section 109 of the Clean Air Act (42 U.S.C.

7409), the Administrator of the Environmental Protection Agency shall take into consideration feasibility and cost.

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12. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE RICHARDSON OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 13, line 16, strike "(a) AUTHORIZATION.—".  
Beginning on page 13, line 23, strike subsection (b) of section 6.

