

112TH CONGRESS  
1ST SESSION

# H. R. 2401

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 2011

Received; read twice and referred to the Committee on Environment and  
Public Works

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## AN ACT

To require analyses of the cumulative and incremental impacts of certain rules and actions of the Environmental Protection Agency, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Transparency in Regu-  
3 latory Analysis of Impacts on the Nation Act of 2011”.

4 **SEC. 2. COMMITTEE FOR THE CUMULATIVE ANALYSIS OF**  
5 **REGULATIONS THAT IMPACT ENERGY AND**  
6 **MANUFACTURING IN THE UNITED STATES.**

7 (a) **ESTABLISHMENT.**—The President shall establish  
8 a committee to be known as the Committee for the Cumu-  
9 lative Analysis of Regulations that Impact Energy and  
10 Manufacturing in the United States (in this Act referred  
11 to as the “Committee”) to analyze and report on the cu-  
12 mulative and incremental impacts of certain rules and ac-  
13 tions of the Environmental Protection Agency, in accord-  
14 ance with sections 3 and 4.

15 (b) **MEMBERS.**—The Committee shall be composed of  
16 the following officials (or their designees):

17 (1) The Secretary of Agriculture, acting  
18 through the Chief Economist.

19 (2) The Secretary of Commerce, acting through  
20 the Chief Economist and the Under Secretary for  
21 International Trade.

22 (3) The Secretary of Labor, acting through the  
23 Commissioner of the Bureau of Labor Statistics.

24 (4) The Secretary of Energy, acting through  
25 the Administrator of the Energy Information Ad-  
26 ministration.

1           (5) The Secretary of the Treasury, acting  
2 through the Deputy Assistant Secretary for Environ-  
3 ment and Energy of the Department of the Treas-  
4 ury.

5           (6) The Administrator of the Environmental  
6 Protection Agency.

7           (7) The Chairman of the Council of Economic  
8 Advisors.

9           (8) The Chairman of the Federal Energy Regu-  
10 latory Commission.

11           (9) The Administrator of the Office of Informa-  
12 tion and Regulatory Affairs.

13           (10) The Chief Counsel for Advocacy of the  
14 Small Business Administration.

15           (11) The Chairman of the United States Inter-  
16 national Trade Commission, acting through the Of-  
17 fice of Economics.

18       (c) CHAIR.—The Secretary of Commerce shall serve  
19 as Chair of the Committee. In carrying out the functions  
20 of the Chair, the Secretary of Commerce shall consult with  
21 the members serving on the Committee pursuant to para-  
22 graphs (5) and (11) of subsection (b).

23       (d) CONSULTATION.—In conducting analyses under  
24 section 3 and preparing reports under section 4, the Com-  
25 mittee shall consult with, and consider pertinent reports

1 issued by, the Electric Reliability Organization certified  
2 under section 215(c) of the Federal Power Act (16 U.S.C.  
3 824o(c)).

4 (e) TERMINATION.—The Committee shall terminate  
5 60 days after submitting its final report pursuant to sec-  
6 tion 4(c).

7 **SEC. 3. ANALYSES.**

8 (a) SCOPE.—The Committee shall conduct analyses,  
9 for each of the calendar years 2016, 2020, and 2030, of  
10 the following:

11 (1) The cumulative impact of covered rules that  
12 are promulgated as final regulations on or before  
13 January 1, 2012, in combination with covered ac-  
14 tions.

15 (2) The cumulative impact of all covered rules  
16 (including covered rules that have not been promul-  
17 gated as final regulations on or before January 1,  
18 2012), in combination with covered actions.

19 (3) The incremental impact of each covered rule  
20 not promulgated as a final regulation on or before  
21 January 1, 2012, relative to an analytic baseline  
22 representing the results of the analysis conducted  
23 under paragraph (1).

24 (b) CONTENTS.—The Committee shall include in  
25 each analysis conducted under this section the following:

1           (1) Estimates of the impacts of the covered  
2 rules and covered actions with regard to—

3           (A) the global economic competitiveness of  
4 the United States, particularly with respect to  
5 energy intensive and trade sensitive industries;

6           (B) other cumulative costs and cumulative  
7 benefits, including evaluation through a general  
8 equilibrium model approach;

9           (C) any resulting change in national,  
10 State, and regional electricity prices;

11           (D) any resulting change in national,  
12 State, and regional fuel prices;

13           (E) the impact on national, State, and re-  
14 gional employment during the 5-year period be-  
15 ginning on the date of enactment of this Act,  
16 and also in the long term, including secondary  
17 impacts associated with increased energy prices  
18 and facility closures; and

19           (F) the reliability and adequacy of bulk  
20 power supply in the United States.

21           (2) Discussion of key uncertainties and assump-  
22 tions associated with each estimate.

23           (3) A sensitivity analysis.

1           (4) Discussion, and where feasible an assess-  
2           ment, of the cumulative impact of the covered rules  
3           and covered actions on—

4                   (A) consumers;

5                   (B) small businesses;

6                   (C) regional economies;

7                   (D) State, local, and tribal governments;

8                   (E) low-income communities;

9                   (F) public health;

10                  (G) local and industry-specific labor mar-  
11                  kets; and

12                  (H) agriculture,

13           as well as key uncertainties associated with each  
14           topic.

15           (c) METHODS.—In conducting analyses under this  
16           section, the Committee shall use the best available meth-  
17           ods, consistent with guidance from the Office of Informa-  
18           tion and Regulatory Affairs and the Office of Management  
19           and Budget Circular A–4.

20           (d) DATA.—In conducting analyses under this sec-  
21           tion, the Committee—

22                   (1) shall use the best data that are available to  
23                   the public or supplied to the Committee by its mem-  
24                   bers, including the most recent such data appro-

1        appropriate for this analysis representing air quality, facil-  
2        ity emissions, and installed controls; and

3            (2) is not required to create data or to use data  
4        that are not readily accessible.

5        (e) COVERED RULES.—In this section, the term “cov-  
6        ered rule” means the following:

7            (1) The following published rules (including any  
8        successor or substantially similar rule):

9            (A) The Clean Air Interstate Rule (as de-  
10        fined in section 5(a)(4)).

11            (B) “National Ambient Air Quality Stand-  
12        ards for Ozone”, published at 73 Fed. Reg.  
13        16436 (March 27, 2008).

14            (C) “National Emission Standards for  
15        Hazardous Air Pollutants for Major Sources:  
16        Industrial, Commercial, and Institutional Boil-  
17        ers and Process Heaters”, published at 76 Fed.  
18        Reg. 15608 (March 21, 2011).

19            (D) “National Emission Standards for  
20        Hazardous Air Pollutants for Area Sources: In-  
21        dustrial, Commercial, and Institutional Boil-  
22        ers”, published at 76 Fed. Reg. 15554 (March  
23        21, 2011).

24            (E) “National Emission Standards for  
25        Hazardous Air Pollutants from Coal- and Oil-

1 fired Electric Utility Steam Generating Units  
2 and Standards of Performance for Fossil-Fuel-  
3 Fired Electric Utility, Industrial-Commercial-  
4 Institutional, and Small Industrial-Commercial-  
5 Institutional Steam Generating Units”, signed  
6 by Administrator Lisa P. Jackson on March 16,  
7 2011.

8 (F) “Hazardous and Solid Waste Manage-  
9 ment System; Identification and Listing of Spe-  
10 cial Wastes; Disposal of Coal Combustion Re-  
11 siduals From Electric Utilities”, published at  
12 75 Fed. Reg. 35127 (June 21, 2010).

13 (G) “Primary National Ambient Air Qual-  
14 ity Standard for Sulfur Dioxide”, published at  
15 75 Fed. Reg. 35520 (June 22, 2010).

16 (H) “Primary National Ambient Air Qual-  
17 ity Standards for Nitrogen Dioxide”, published  
18 at 75 Fed. Reg. 6474 (February 9, 2010).

19 (I) “National Emission Standards for Haz-  
20 ardous Air Pollutants from the Portland Ce-  
21 ment Manufacturing Industry and Standards of  
22 Performance for Portland Cement Plants”,  
23 published at 75 Fed. Reg. 54970 (September 9,  
24 2010).



1           (2) The following additional rules or guidelines  
2 promulgated on or after January 1, 2009:

3           (A) Any rule or guideline promulgated  
4 under section 111(b) or 111(d) of the Clean Air  
5 Act (42 U.S.C. 7411(b), 7411(d)) to address  
6 climate change.

7           (B) Any rule or guideline promulgated by  
8 the Administrator of the Environmental Protec-  
9 tion Agency, a State, a local government, or a  
10 permitting agency under or as the result of sec-  
11 tion 169A or 169B of the Clean Air Act (42  
12 U.S.C. 7491, 7492).

13           (C) Any rule establishing or modifying a  
14 national ambient air quality standard under  
15 section 109 of the Clean Air Act (42 U.S.C.  
16 7409).

17           (D) Any rule addressing fuels under title  
18 II of the Clean Air Act (42 U.S.C. 7521 et  
19 seq.) as described in the Unified Agenda of  
20 Federal Regulatory and Deregulatory Actions  
21 under Regulatory Identification Number 2060-  
22 AQ86, or any substantially similar rule, includ-  
23 ing any rule under section 211(v) of the Clean  
24 Air Act (42 U.S.C. 7545(v)).

1 (f) COVERED ACTIONS.—In this section, the term  
2 “covered action” means any action on or after January  
3 1, 2009, by the Administrator of the Environmental Pro-  
4 tection Agency, a State, a local government, or a permit-  
5 ting agency as a result of the application of part C of title  
6 I (relating to prevention of significant deterioration of air  
7 quality) or title V (relating to permitting) of the Clean  
8 Air Act (42 U.S.C. 7401 et seq.), if such application oc-  
9 curs with respect to an air pollutant that is identified as  
10 a greenhouse gas in “Endangerment and Cause or Con-  
11 tribute Findings for Greenhouse Gases Under Section  
12 202(a) of the Clean Air Act”, published at 74 Fed. Reg.  
13 66496 (December 15, 2009).

14 **SEC. 4. REPORTS; PUBLIC COMMENT.**

15 (a) PRELIMINARY REPORT.—Not later than January  
16 31, 2012, the Committee shall make public and submit  
17 to the Committee on Energy and Commerce of the House  
18 of Representatives and the Committee on Environment  
19 and Public Works of the Senate a preliminary report con-  
20 taining the results of the analyses conducted under section  
21 3.

22 (b) PUBLIC COMMENT PERIOD.—The Committee  
23 shall accept public comments regarding the preliminary re-  
24 port submitted under subsection (a) for a period of 120  
25 days after such submission.

1 (c) FINAL REPORT.—Not later than August 1, 2012,  
2 the Committee shall submit to Congress a final report con-  
3 taining the analyses conducted under section 3, including  
4 any revisions to such analyses made as a result of public  
5 comments, and a response to such comments.

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

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

10 (1) EARLIER RULES.—The rule entitled “Fed-  
11 eral Implementation Plans: Interstate Transport of  
12 Fine Particulate Matter and Ozone and Correction  
13 of SIP Approvals”, published at 76 Fed. Reg. 48208  
14 (August 8, 2011), and any successor or substantially  
15 similar rule, shall be of no force or effect, and shall  
16 be treated as though such rule had never taken ef-  
17 fect.

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

24 (3) ADDITIONAL RULEMAKINGS.—

1 (A) ISSUANCE OF NEW RULES.—The Ad-  
2 ministrator—

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

14 (ii) in issuing any rule described in  
15 clause (i), shall base the rule on actual  
16 monitored (and not modeled) data and  
17 shall, notwithstanding section  
18 110(a)(2)(D)(i)(I), allow the trading of  
19 emissions allowances among entities cov-  
20 ered by the rule irrespective of the States  
21 in which such entities are located.

22 (B) IMPLEMENTATION SCHEDULE.—In  
23 promulgating any final rule described in sub-  
24 paragraph (A)(i), the Administrator shall estab-  
25 lish a date for State implementation of the

1 standards established by such final rule that is  
2 not earlier than 3 years after the date of publi-  
3 cation of such final rule.

4 (4) DEFINITION OF CLEAN AIR INTERSTATE  
5 RULE.—For purposes of this section, the term  
6 “Clean Air Interstate Rule” means the Clean Air  
7 Interstate Rule and the rule establishing Federal  
8 Implementation Plans for the Clean Air Interstate  
9 Rule as promulgated and modified by the Adminis-  
10 trator (70 Fed. Reg. 25162 (May 12, 2005), 71  
11 Fed. Reg. 25288 (April 28, 2006), 72 Fed. Reg.  
12 55657 (October 1, 2007), 72 Fed. Reg. 59190 (Oc-  
13 tober 19, 2007), 72 Fed. Reg. 62338 (November 2,  
14 2007), 74 Fed. Reg. 56721 (November 3, 2009)).

15 (b) STEAM GENERATING UNIT RULES.—

16 (1) EARLIER RULES.—The proposed rule enti-  
17 tled “National Emission Standards for Hazardous  
18 Air Pollutants From Coal- and Oil-Fired Electric  
19 Utility Steam Generating Units and Standards of  
20 Performance for Fossil-Fuel-Fired Electric Utility,  
21 Industrial-Commercial- Institutional, and Small In-  
22 dustrial-Commercial-Institutional Steam Generating  
23 Units” published at 76 Fed. Reg. 24976 (May 3,  
24 2011), and any final rule that is based on such pro-  
25 posed rule and is issued prior to the date of the en-

1 actment of this Act, shall be of no force and effect,  
2 and shall be treated as though such proposed or  
3 final rule had never been issued. In conducting anal-  
4 yses under section 3(a), the Committee shall analyze  
5 the rule described in section 3(e)(1)(E) (including  
6 any successor or substantially similar rule) as if the  
7 preceding sentence did not apply to such rule.

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

11 (A) issue regulations establishing national  
12 emission standards for coal-and oil-fired electric  
13 utility steam generating units under section 112  
14 of the Clean Air Act (42 U.S.C. 7412) with re-  
15 spect to each hazardous air pollutant for which  
16 the Administrator finds such regulations are  
17 appropriate and necessary pursuant to sub-  
18 section (n)(1)(A) of such section;

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

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

3 (i) after issuing proposed regulations  
4 under such subparagraphs;

5 (ii) after consideration of the final re-  
6 port submitted under section 4(c); and

7 (iii) not earlier than the date that is  
8 12 months after the date on which the  
9 Committee submits such report to the Con-  
10 gress, or such later date as may be deter-  
11 mined by the Administrator.

12 (3) COMPLIANCE PROVISIONS.—

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

16 (i) shall establish a date for compli-  
17 ance with the standards and requirements  
18 under such regulations that is not earlier  
19 than 5 years after the effective date of the  
20 regulations; and

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

23 (I) the costs of achieving emis-  
24 sions reductions;

1 (II) any non-air quality health  
2 and environmental impact and energy  
3 requirements of the standards and re-  
4 quirements;

5 (III) the feasibility of imple-  
6 menting the standards and require-  
7 ments, including the time needed to—

8 (aa) obtain necessary permit  
9 approvals; and

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

12 (IV) the availability of equip-  
13 ment, suppliers, and labor, given the  
14 requirements of the regulations and  
15 other proposed or finalized regula-  
16 tions; and

17 (V) potential net employment im-  
18 pacts.

19 (B) NEW SOURCES.—With respect to the  
20 regulations promulgated pursuant to paragraph  
21 (2)—

22 (i) the date on which the Adminis-  
23 trator proposes a regulation pursuant to  
24 paragraph (2)(A) establishing an emission  
25 standard under section 112 of the Clean



1 Air Act (42 U.S.C. 7412) shall be treated  
2 as the date on which the Administrator  
3 first proposes such a regulation for pur-  
4 poses of applying the definition of a new  
5 source under section 112(a)(4) of such Act  
6 (42 U.S.C. 7412(a)(4));

7 (ii) the date on which the Adminis-  
8 trator proposes a regulation pursuant to  
9 paragraph (2)(B) establishing a standard  
10 of performance under section 111 of the  
11 Clean Air Act (42 U.S.C. 7411) shall be  
12 treated as the date on which the Adminis-  
13 trator proposes such a regulation for pur-  
14 poses of applying the definition of a new  
15 source under section 111(a)(2) of such Act  
16 (42 U.S.C. 7411(a)(2));

17 (iii) for purposes of any emission  
18 standard or limitation applicable to electric  
19 utility steam generating units, the term  
20 “new source” means a stationary source  
21 for which a preconstruction permit or  
22 other preconstruction approval required  
23 under the Clean Air Act (42 U.S.C. 7401  
24 et seq.) has been issued after the effective

1 date of such emissions standard or limita-  
2 tion; and

3 (iv) for purposes of clause (iii), the  
4 date of issuance of a preconstruction per-  
5 mit or other preconstruction approval is  
6 deemed to be the date on which such per-  
7 mit or approval is issued to the applicant  
8 irrespective of any administrative or judi-  
9 cial review occurring after such date.

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

15 (4) OTHER PROVISIONS.—

16 (A) ESTABLISHMENT OF STANDARDS  
17 ACHIEVABLE IN PRACTICE.—The regulations  
18 promulgated pursuant to paragraph (2)(A) of  
19 this section shall apply section 112(d)(3) of the  
20 Clean Air Act (42 U.S.C. 7412(d)(3)) in ac-  
21 cordance with the following:

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

24 (I) The Administrator shall iden-  
25 tify the best controlled similar source

1 for each source category or sub-  
2 category.

3 (II) The best controlled similar  
4 source for a category or subcategory  
5 shall be the single source that is de-  
6 termined by the Administrator to be  
7 the best controlled, in the aggregate,  
8 for all of the hazardous air pollutants  
9 for which the Administrator intends  
10 to issue standards for such source cat-  
11 egory or subcategory, under actual op-  
12 erating conditions, taking into account  
13 the variability in actual source per-  
14 formance, source design, fuels, con-  
15 trols, ability to measure pollutant  
16 emissions, and operating conditions.

17 (ii) EXISTING SOURCES.—With re-  
18 spect to existing sources:

19 (I) The Administrator shall iden-  
20 tify one group of sources that con-  
21 stitutes the best performing 12 per-  
22 cent of existing sources for each  
23 source category or subcategory.

24 (II) The group constituting the  
25 best performing 12 percent of existing

1 sources for a category or subcategory  
2 shall be the single group that is deter-  
3 mined by the Administrator to be the  
4 best performing, in the aggregate, for  
5 all of the hazardous air pollutants for  
6 which the Administrator intends to  
7 issue standards for such source cat-  
8 egory or subcategory, under actual op-  
9 erating conditions, taking into account  
10 the variability in actual source per-  
11 formance, source design, fuels, con-  
12 trols, ability to measure pollutant  
13 emissions, and operating conditions.

14 (B) REGULATORY ALTERNATIVES.—For  
15 the regulations promulgated pursuant to para-  
16 graph (2) of this section, from among the range  
17 of regulatory alternatives authorized under the  
18 Clean Air Act (42 U.S.C. 7401 et seq.), includ-  
19 ing work practice standards under section  
20 112(h) of such Act (42 U.S.C. 7412(h)), the  
21 Administrator shall impose the least burden-  
22 some, consistent with the purposes of such Act  
23 and Executive Order No. 13563 published at 76  
24 Fed. Reg. 3821 (January 21, 2011).

1 **SEC. 6. CONSIDERATION OF FEASIBILITY AND COST IN ES-**  
2 **TABLISHING NATIONAL AMBIENT AIR QUAL-**  
3 **ITY STANDARDS.**

4 In establishing any national primary or secondary  
5 ambient air quality standard under section 109 of the  
6 Clean Air Act (42 U.S.C. 7409), the Administrator of the  
7 Environmental Protection Agency shall take into consider-  
8 ation feasibility and cost.

9 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

10 (a) **AUTHORIZATION.**—There are authorized to be ap-  
11 propriated to carry out this Act—

12 (1) for fiscal year 2012, \$3,000,000 to the De-  
13 partment of Commerce, of which not more than  
14 \$2,000,000 shall be for carrying out section 3; and

15 (2) to the Environmental Protection Agency—

16 (A) for fiscal year 2012, \$1,000,000; and

17 (B) for fiscal year 2013, \$500,000.

18 (b) **OFFSET.**—Effective October 1, 2011, section  
19 797(a) of the Energy Policy Act of 2005, as amended by  
20 section 2(e) of the Diesel Reduction Act of 2010 (Public  
21 Law 111–364), is amended—

22 (1) by striking “2012” and inserting “2014”;

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

          Passed the House of Representatives September 23,  
2011.

Attest:

KAREN L. HAAS,

*Clerk.*