

TRANSPARENCY IN REGULATORY ANALYSIS OF IMPACTS
ON THE NATION ACT OF 2011

SEPTEMBER 15, 2011.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2401]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011”.

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

(a) **ESTABLISHMENT.**—The President shall establish a committee to be known as the Committee for the Cumulative Analysis of Regulations that Impact Energy and Manufacturing in the United States (in this Act referred to as the “Committee”) to analyze and report on the cumulative and incremental impacts of certain rules and actions of the Environmental Protection Agency, in accordance with sections 3 and 4.

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

- (1) The Secretary of Agriculture, acting through the Chief Economist.
- (2) The Secretary of Commerce, acting through the Chief Economist and the Under Secretary for International Trade.
- (3) The Secretary of Labor, acting through the Commissioner of the Bureau of Labor Statistics.
- (4) The Secretary of Energy, acting through the Administrator of the Energy Information Administration.
- (5) The Secretary of the Treasury, acting through the Deputy Assistant Secretary for Environment and Energy of the Department of the Treasury.
- (6) The Administrator of the Environmental Protection Agency.
- (7) The Chairman of the Council of Economic Advisors.
- (8) The Chairman of the Federal Energy Regulatory Commission.
- (9) The Administrator of the Office of Information and Regulatory Affairs.
- (10) The Chief Counsel for Advocacy of the Small Business Administration.
- (11) The Chairman of the United States International Trade Commission, acting through the Office of Economics.

(c) **CHAIR.**—The Secretary of Commerce shall serve as Chair of the Committee. In carrying out the functions of the Chair, the Secretary of Commerce shall consult with the members serving on the Committee pursuant to paragraphs (5) and (11) of subsection (b).

(d) **CONSULTATION.**—In conducting analyses under section 3 and preparing reports under section 4, the Committee shall consult with, and consider pertinent reports issued by, the Electric Reliability Organization certified under section 215(c) of the Federal Power Act (16 U.S.C. 824o(c)).

(e) **TERMINATION.**—The Committee shall terminate 60 days after submitting its final report pursuant to section 4(c).

SEC. 3. ANALYSES.

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

- (1) The cumulative impact of covered rules that are promulgated as final regulations on or before January 1, 2012, in combination with covered actions.
- (2) The cumulative impact of all covered rules (including covered rules that have not been promulgated as final regulations on or before January 1, 2012), in combination with covered actions.
- (3) The incremental impact of each covered rule not promulgated as a final regulation on or before January 1, 2012, relative to an analytic baseline representing the results of the analysis conducted under paragraph (1).

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

- (1) Estimates of the impacts of the covered rules and covered actions with regard to—
 - (A) the global economic competitiveness of the United States, particularly with respect to energy intensive and trade sensitive industries;
 - (B) other cumulative costs and cumulative benefits, including evaluation through a general equilibrium model approach;
 - (C) any resulting change in national, State, and regional electricity prices;
 - (D) any resulting change in national, State, and regional fuel prices;
 - (E) the impact on national, State, and regional employment during the 5-year period beginning on the date of enactment of this Act, and also in

the long term, including secondary impacts associated with increased energy prices and facility closures; and

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

(2) Discussion of key uncertainties and assumptions associated with each estimate.

(3) A sensitivity analysis.

(4) Discussion, and where feasible an assessment, of the cumulative impact of the covered rules and covered actions on—

- (A) consumers;
- (B) small businesses;
- (C) regional economies;
- (D) State, local, and tribal governments;
- (E) local and industry-specific labor markets; and
- (F) agriculture,

as well as key uncertainties associated with each topic.

(c) METHODS.—In conducting analyses under this section, the Committee shall use the best available methods, consistent with guidance from the Office of Information and Regulatory Affairs and the Office of Management and Budget Circular A–4.

(d) DATA.—In conducting analyses under this section, the Committee—

(1) shall use the best data that are available to the public or supplied to the Committee by its members, including the most recent such data appropriate for this analysis representing air quality, facility emissions, and installed controls; and

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

(e) COVERED RULES.—In this section, the term “covered rule” means the following:

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

(A) “Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone”, published at 75 Fed. Reg. 45210 (August 2, 2010).

(B) “National Ambient Air Quality Standards for Ozone”, published at 75 Fed. Reg. 2938 (January 19, 2010).

(C) “National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters”, published at 76 Fed. Reg. 15608 (March 21, 2011).

(D) “National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers”, published at 76 Fed. Reg. 15554 (March 21, 2011).

(E) “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”, signed by Administrator Lisa P. Jackson on March 16, 2011.

(F) “Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities”, published at 75 Fed. Reg. 35127 (June 21, 2010).

(G) “Primary National Ambient Air Quality Standard for Sulfur Dioxide”, published at 75 Fed. Reg. 35520 (June 22, 2010).

(H) “Primary National Ambient Air Quality Standards for Nitrogen Dioxide”, published at 75 Fed. Reg. 6474 (February 9, 2010).

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

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

(B) Any rule or guideline promulgated by the Administrator of the Environmental Protection Agency, a State, a local government, or a permitting agency under or as the result of section 169A or 169B of the Clean Air Act (42 U.S.C. 7491, 7492).

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

(f) COVERED ACTIONS.—In this section, the term “covered action” means any action on or after January 1, 2009, by the Administrator of the Environmental Protection Agency, a State, a local government, or a permitting agency as a result of the application of part C of title I (relating to prevention of significant deterioration of air quality) or title V (relating to permitting) of the Clean Air Act (42 U.S.C. 7401 et seq.), if such application occurs with respect to an air pollutant that is identified as a greenhouse gas in “Endangerment and Cause or Contribute Findings for Green-

house Gases Under Section 202(a) of the Clean Air Act”, published at 74 Fed. Reg. 66496 (December 15, 2009).

SEC. 4. REPORTS; PUBLIC COMMENT.

(a) **PRELIMINARY REPORT.**—Not later than January 31, 2012, the Committee shall make public and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a preliminary report containing the results of the analyses conducted under section 3.

(b) **PUBLIC COMMENT PERIOD.**—The Committee shall accept public comments regarding the preliminary report submitted under subsection (a) for a period of 90 days after such submission.

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

SEC. 5. REGULATORY DEFERRAL OF CERTAIN RULES.

(a) **NO FINAL ACTION.**—The Administrator of the Environmental Protection Agency shall not take final action with respect to the rule listed in subparagraph (E) of section 3(e)(1) (relating to national emission standards and standards of performance for certain electric generating units) until a date (to be determined by the Administrator) that is at least 6 months after the day on which the Committee submits the final report under section 4(c).

(b) **RULES FINALIZED PRIOR TO ENACTMENT.**—Notwithstanding the final action taken with respect to the rule listed in subparagraph (A) of section 3(e)(1) (relating to Federal implementation plans to reduce interstate transport of fine particulate matter and ozone) and final action (if any) taken with respect to the rule listed in subparagraph (E) of section 3(e)(1) prior to the date of the enactment of this Act—

(1) such final action shall not be or become, as applicable, effective until a date (to be determined by the Administrator) that is at least 6 months after the day on which the Committee submits the final report under section 4(c); and

(2) the date for compliance with any standard or requirement in either such finalized rule, and any date for further regulatory action triggered by either such finalized rule, shall be delayed by a period equal to the period—

(A) beginning on the date of the publication of the final action for the respective finalized rule; and

(B) ending on the date on which such final action becomes effective pursuant to paragraph (1).

(c) **APPLICABILITY OF CLEAN AIR INTERSTATE RULE DURING INTERIM PERIOD.**—Notwithstanding any other provision of law, the Administrator of the Environmental Protection Agency shall continue to implement 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 of the Environmental Protection Agency (70 Fed. Reg. 25162 (May 12, 2005), 71 Fed. Reg. 25288 (April 28, 2006), 71 Fed. Reg. 25328 (April 28, 2006), 72 Fed. Reg. 59190 (Oct. 19, 2007), 72 Fed. Reg. 62338 (Nov. 2, 2007), 74 Fed. Reg. 56721 (Nov. 3, 2009)) until the date on which final action with respect to the rule listed in subparagraph (A) of section 3(e)(1) becomes effective pursuant to subsection (b)(1).

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

(a) **AUTHORIZATION.**—There are authorized to be appropriated to carry out this Act for fiscal year 2012—

(1) \$3,000,000 to the Department of Commerce, of which not more than \$2,000,000 shall be for carrying out section 3; and

(2) \$500,000 to the Environmental Protection Agency.

(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 “2013”; and

(2) by inserting “\$46,000,000 for fiscal year 2012 and” after “to carry out this subtitle”.

PURPOSE AND SUMMARY

H.R. 2401, the “Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011” was introduced by Rep. John Sullivan (together with Reps. Matheson, Upton, Whitfield, Shimkus, Walden, Latta, Harper, McMorris Rodgers, McKinley, Terry, Capito,

Pompeo, Ross, Guthrie, Kinzinger, Bilbray, Turner, Duncan, Bucshon, Duffy, Roskam, Myrick, Olson, Johnson, Rokita, Costa, Holden, and Rogers.) on June 24, 2011. The legislation establishes an interagency committee for the cumulative analysis of certain significant Environmental Protection Agency (EPA) regulations that impact energy and manufacturing in the U.S. The committee will analyze and report on the cumulative and incremental impacts of certain rules and actions on the U.S.'s global economic competitiveness, domestic energy prices and reliability, and jobs, in addition to other metrics. In addition, H.R. 2401 will delay the final date for two of the rules being analyzed—one impacting utility boilers and one addressing interstate emissions—until the impact of the collection of regulations is fully understood.

BACKGROUND AND NEED FOR LEGISLATION

Americans today confront a weak economy, with an unemployment rate exceeding 9 percent, rising energy prices, and intense global competition for the manufacturing sector jobs. Despite these difficult economic conditions, EPA has planned, proposed, and finalized a number of regulations that are expected to negatively impact the U.S.'s global economic competitiveness, domestic energy prices and reliability, and jobs. To date, there has been no study of the cumulative impact of these many regulations. Such a study of the cumulative impacts of regulations should be completed prior to the implementation of further significant regulations in order to inform policymakers of whether these rules will result in duplicative, conflicting, or overlapping requirements and whether alternative strategies should be undertaken to avoid damage to an already fragile economy.

H.R. 2401 specifies that the following EPA rules and actions are to be included in the report.

- Greenhouse Gas New Source Performance Standards for Petroleum Refineries and Utilities as well as Prevention of Significant Deterioration and Title V permitting for Greenhouse Gas Emissions (“GHG Rules”);
- National Ambient Air Quality Standards for Ozone, Particulate Matter, Sulfur Dioxide and Nitrogen Dioxide;
- Cross-State Air Pollution Rule (“C-SAPR”);
- National Emissions Standards for Hazardous Air Pollutants for Major and Area Boiler Sources (“Boiler MACT Rules”);
- National Emissions Standards for Hazardous Air Pollutants from Coal and Oil-fired Electric Generating Units (“Utility MACT Rule”);
- Coal Combustion Residuals Rule; and
- Recent actions under the Regional Haze Program.

Rule-by-rule analyses performed by the EPA and by outside parties reveal that many of these regulations individually will cost tens of billions of dollars each year. These costs are associated with installation of control equipment and monitoring that result in increased energy costs and employment market changes. For example, according to estimates prepared by EPA itself:

- The Boiler MACT Rules will impose \$5.8 billion in up-front capital costs, and new compliance costs of \$2.2 billion annually.

- The Utility MACT Rule will impose costs of \$10.9 billion annually, and electricity price increases of 3.7% in 2015, 2.6% in 2020, and 1.9% in 2030.
- C-SAPR will impose costs of \$1.4 billion in 2012 and \$800 million in 2014. National Ambient Air Quality Standards for Ozone would have imposed costs of \$19 to \$90 billion annually by 2020.

Other estimates are even higher. For example, for NERA Economic Consulting has preliminarily estimated the costs for the Utility MACT and C-SAPR together to be \$17.8 billion annually, and a total cost of \$184 billion (present value) from 2011 to 2030.

It is also unknown whether the benefits associated with emissions reductions under the regulations could be achieved more efficiently through a different combination of controls. Because there has been no cumulative analysis of these regulations, it is not known whether the benefits are duplicative, and in fact, could be achieved by imposing only a subset of these regulations, thereby providing public health protection while also reducing the overall regulatory burden on the economy.

ENERGY COSTS

Analysis completed for some individual rules demonstrates that significant energy price increases are expected, but there has been no cumulative analysis to explore whether these electricity and fuel price increases are additive, or whether energy cost increases will be greater as the result of efforts to comply with multiple rules concurrently. For example, according to estimates prepared by EPA:

- The Utility MACT Rule will increase electricity prices 3.7% in 2015, 2.6% in 2020, and 1.9% in 2030.
- The Transport Rule will increase electricity prices 1.7% in 2012 and .8% in 2014.

NERA Economic Consulting has preliminarily estimated that these two rules, together, will increase energy prices 12% nationally in 2016, and as high as 24% in certain states.

JOBS AND GLOBAL COMPETITIVENESS

Unemployment in the U.S. remains very high. Economic recovery has lagged beyond expectations. In this environment more than ever, there is concern that manufacturing firms will find more favorable operating conditions overseas, reducing their U.S. workforce. Further, jobs associated with those facilities expected to cease operations as the result of these regulations will increase the pressure on the economy to absorb unemployed workers.

There has been no analysis of the cumulative impact of these regulations on unemployment in the United States, or on the likelihood of manufacturers to move facilities abroad to take advantage of lower energy prices and more business-friendly regulatory approaches.

HEARINGS

The Subcommittee on Energy and Power on April 7, 2011, held a legislative hearing on a discussion draft of the "Transparency in Regulatory Analysis of Impacts on the Nation Act," and received testimony from:

- Gerry Cauley, President and CEO, North American Reliability Administration;
 - Mark A. Bailey, President and CEO, Big Rivers Electric Corporation;
 - Timothy R. Hess, Division Vice President, Glatfelter;
 - Scott Segal, Director, Electric Reliability Coordinating Council;
 - Robin Ridgway, Director of Environmental Health, Safety and Regulatory Compliance, Purdue University;
 - Rena Steinzor, President, Center for Progressive Reform;
- and
- Eric Schaeffer, Executive Director, Environmental Integrity Project.

COMMITTEE CONSIDERATION

On March 31, 2011, Representatives John Sullivan and Jim Matheson released a discussion draft of the Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011.

On April 7, 2011, the Subcommittee on Energy and Power held a legislative hearing on the discussion draft.

On May 4, 2011, Representatives Sullivan and Matheson, together with other Members, introduced the legislation as H.R. 1705.

On May 24, 2011, the Subcommittee on Energy and Power favorably reported H.R. 1705 to the full Committee by voice vote. During the markup, three amendments were offered, of which one was adopted, all by voice vote.

On June 24, 2011, Representatives Sullivan and Matheson, together with other Members, reintroduced H.R. 1705, with an amendment, as H.R. 2401.

On July 8, the Subcommittee on Energy and Power favorably reported the bill to the full Committee by voice vote. During the markup, two amendments were offered and defeated, one by voice vote and one by roll call vote.

On July 11, 2011, and July 12, 2011, the Committee on Energy and Commerce met in open markup session. During the markup, six amendments were offered of which four were adopted, two by voice and two by roll call vote.

On July 12, 2011, the Committee ordered H.R. 2401 favorably reported to the House, as amended.

COMMITTEE VOTES

Clause 3(b) of rule XII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Upton to order H.R. 2401 reported to the House, as amended, was agreed to by a record vote of 33 yeas and 13 nays. The following reflects the recorded votes taken during the Committee consideration, including the names of those Members voting for and against.

**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 57**

BILL: H.R. 2401, "Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011"

AMENDMENT: An amendment by Mr. Whitfield, No. 2, to defer the Clean Air Transport Rule for 28 Eastern States, also known as the Cross-State Air Pollution Rule, and the Electric Generating Units Maximum Available Control Technology.

DISPOSITION: AGREED TO, by a roll call vote of 32 yeas to 18 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Barton	X			Mr. Dingell		X	
Mr. Stearns	X			Mr. Markey			
Mr. Whitfield	X			Mr. Towns		X	
Mr. Shimkus	X			Mr. Pallone		X	
Mr. Pitts	X			Mr. Rush		X	
Mrs. Bono Mack	X			Ms. Eshoo		X	
Mr. Walden	X			Mr. Engel			
Mr. Terry	X			Mr. Green	X		
Mr. Rogers	X			Ms. DeGette		X	
Mrs. Myrick	X			Mrs. Capps		X	
Mr. Sullivan	X			Mr. Doyle		X	
Mr. Murphy	X			Ms. Schakowsky		X	
Mr. Burgess	X			Mr. Gonzalez			
Mrs. Blackburn	X			Mr. Inslee		X	
Mr. Bilbray				Ms. Baldwin		X	
Mr. Bass		X		Mr. Ross	X		
Mr. Gingrey	X			Mr. Matheson	X		
Mr. Scalise	X			Mr. Butterfield		X	
Mr. Latta	X			Mr. Barrow	X		
Mrs. McMorris Rodgers	X			Ms. Matsui		X	
Mr. Harper	X			Mrs. Christensen		X	
Mr. Lance		X		Ms. Castor		X	
Mr. Cassidy	X						
Mr. Guthrie	X						
Mr. Olson	X						
Mr. McKinley	X						
Mr. Gardner	X						
Mr. Pompeo	X						
Mr. Kinzinger	X						
Mr. Griffith	X						

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**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 58**

BILL: H.R. 2401. "Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011"

AMENDMENT: An amendment by Mr. Rush, No. 4, as amended, to add members to the interagency committee in the Act and also to insert language specifying specific elements that should be analyzed by the interagency committee.

DISPOSITION: NOT AGREED TO, by a roll call vote of 20 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey			
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone			
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick		X		Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky			
Mr. Burgess		X		Mr. Gonzalez			
Mrs. Blackburn				Mr. Inslee	X		
Mr. Bilbray	X			Ms. Baldwin	X		
Mr. Bass	X			Mr. Ross		X	
Mr. Gingrey		X		Mr. Matheson		X	
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow	X		
Mrs. McMorris Rodgers		X		Ms. Matsui			
Mr. Harper		X		Mrs. Christensen	X		
Mr. Lance	X			Ms. Castor	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith	X						

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**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 59**

BILL: H.R. 2401. "Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011"

AMENDMENT: An amendment by Mrs. Capps, No. 5, to require the Nuclear Regulatory Commissions in conjunction with the EPA to require each licensed nuclear facility to prevent damage to cores and spent fuel in the event of a loss of all onsite and offsite electric power for an extended period of time.

DISPOSITION: NOT AGREED TO, by a roll call vote of 18 yeas to 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey			
Mr. Whitfield		X		Mr. Towns			
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green			
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick		X		Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky			
Mr. Burgess		X		Mr. Gonzalez	X		
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross	X		
Mr. Gingrey				Mr. Matheson	X		
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow	X		
Mrs. McMorris Rodgers		X		Ms. Matsui			
Mr. Harper		X		Mrs. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 60**

BILL: H.R. 2401, "Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011"

AMENDMENT: A motion by Mr. Upton to order H.R. 2401 favorably reported to the House, as amended. (Final Passage).

DISPOSITION: AGREED TO, by a roll call vote of 33 yeas to 13 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Barton	X			Mr. Dingell		X	
Mr. Stearns	X			Mr. Markey			
Mr. Whitfield	X			Mr. Towns			
Mr. Shimkus	X			Mr. Pallone		X	
Mr. Pitts	X			Mr. Rush		X	
Mrs. Bono Mack	X			Ms. Eshoo		X	
Mr. Walden	X			Mr. Engel			
Mr. Terry				Mr. Green	X		
Mr. Rogers	X			Ms. DeGette		X	
Mrs. Myrick	X			Mrs. Capps		X	
Mr. Sullivan	X			Mr. Doyle		X	
Mr. Murphy	X			Ms. Schakowsky			
Mr. Burgess	X			Mr. Gonzalez	X		
Mrs. Blackburn	X			Mr. Inslee		X	
Mr. Bilbray	X			Ms. Baldwin		X	
Mr. Bass		X		Mr. Ross	X		
Mr. Gingrey	X			Mr. Matheson	X		
Mr. Scalise	X			Mr. Butterfield		X	
Mr. Latta	X			Mr. Barrow	X		
Mrs. McMorris Rodgers				Ms. Matsui			
Mr. Harper	X			Mrs. Christensen			
Mr. Lance	X			Ms. Castor		X	
Mr. Cassidy	X						
Mr. Guthrie	X						
Mr. Olson	X						
Mr. McKinley	X						
Mr. Gardner	X						
Mr. Pompeo	X						
Mr. Kinzinger	X						
Mr. Griffith	X						

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COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 2401 establishes an interagency committee to perform analyses of the cumulative and incremental impacts of certain rules and actions of the Environmental Protection Agency.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY AND
TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2401, the Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 2401, the Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011, contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

H.R. 2401—Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011

Summary: H.R. 2401 would establish an interagency committee (to be known as the Committee for the Cumulative Analysis of Regulations that Impact Energy and Manufacturing in the United States) to analyze and report on a variety of rules and actions taken by the Environmental Protection Agency (EPA) related to enforcing the Clean Air Act. The Secretary of Commerce would chair the committee, which would consist of representatives from various agencies, including EPA, the Department of Labor, and the Department of Energy. The committee would be required to analyze potential economic impacts of specific EPA rules in calendar years 2016, 2020, and 2030, using the best data available; the final report would be due to the Congress no later than August 1, 2012.

The bill also would delay until six months after the release of that final report the implementation of two EPA rules the Transport Rule and the Utility Maximum Achievable Control Technology Rule. Finally, the bill would reduce the amounts authorized to be appropriated under current law to support an EPA program related to diesel emissions. Assuming appropriation actions consistent with the bill, CBO estimates that implementing H.R. 2401 would result

in net discretionary savings of \$43 million over the 2012–2016 period.

Enacting this legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2401 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2401 is shown in the following table. The costs of this legislation fall within budget functions 300 (natural resources and environment) and 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—					2012–2016
	2012	2013	2014	2015	2016	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Funding for the Department of Commerce:						
Authorization Level	3	0	0	0	0	3
Estimated Outlays	3	0	0	0	0	3
Funding for the Environmental Protection Agency:						
Estimated Authorization Level	1	0	0	0	0	1
Estimated Outlays	1	0	0	0	0	1
Reduced Authorizations for the Diesel Emissions Reduction Program:						
Authorization Level	–54	0	0	0	0	–54
Estimated Outlays	–14	–16	–9	–5	–3	–47
Total Proposed Changes:						
Estimated Authorization Level	–50	0	0	0	0	–50
Estimated Outlays	–10	–16	–9	–5	–3	–43

Basis of estimate: H.R. 2401 would authorize the appropriation in 2012 of \$3 million for the Department of Commerce and \$1 million for EPA to meet the requirements for data collection and analyses under the bill. The bill also would delay the implementation of EPA’s two rules related to pollution, but CBO estimates that delay would not have a significant impact on the federal budget. Finally, the legislation would reduce, from \$100 million to \$46 million, an existing authorization of appropriations to support EPA’s program to reduce diesel emissions in 2012. (For 2011, \$50 million was appropriated for this program.) Taken as a whole, CBO estimates that implementing this legislation would result in a net decrease in discretionary spending of \$43 million over the 2012–2016 period, assuming appropriation actions consistent with the bill.

Intergovernmental and private-sector impact: H.R. 2401 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Susanne S. Mehlman and Susan Willie; Impact on state, local, and tribal governments: Ryan Miller; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

Section 1: Short title

Section 1 provides the short title for the legislation, the “Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011” (TRAIN Act).

Section 2: Committee for the cumulative analysis of regulations that impact energy and manufacturing in the United States

Section 2 establishes an interagency committee (the “Committee”) for the cumulative analysis of regulations that impact energy and manufacturing in the United States, and sets forth the composition of the Committee, which will include:

- The Secretary of Agriculture, acting through the Chief Economist;
- The Secretary of Commerce, acting through the Chief Economist and the Under Secretary for International Trade;
- The Secretary of Labor, acting through the Commissioner of the Bureau of Labor Statistics;
- The Secretary of Energy, acting through the Administrator of the Energy Information Administration;
- The Secretary of the Treasury, acting through the Deputy Assistant Secretary for Environment and Energy of the Department of the Treasury;
- The Administrator of EPA;
- The Chairman of the Council of Economic Advisors;
- The Chairman of the Federal Energy Regulatory Commission;
- The Administrator of the Office of Information and Regulatory Affairs;
- The Chief Counsel for Advocacy of the Small Business Administration; and
- The Chairman of the United States International Trade Commission, Office of Economics.

The Committee will be chaired by Committee members from the Department of Commerce in consultation with Committee members from the Department of the Treasury and the International Trade Commission. The TRAIN Act directs the Committee to consult with and consider pertinent reports issued by the North American Electric Reliability Corporation.

The Committee will terminate 60 days after submitting a final report.

Section 3: Analyses

Section 3 of the TRAIN Act describes the analyses that the Committee is required to conduct, including an estimate of the cumulative impacts of covered rules and actions that are proposed or finalized by January 1, 2012. The Committee will also conduct an analysis of the incremental impact of each covered rule proposed but not finalized relative to that cumulative baseline. The Committee's analyses will include the impacts of the covered rules and actions with regard to:

- U.S. competitiveness, including energy intensive and trade sensitive industries;
- other cumulative cost and cumulative benefit impacts;
- changes in electricity and fuel prices;
- impact on national, State, and regional employment both in the short- and long-term; and
- reliability and adequacy of bulk power supply.

The analyses will also include a discussion of the key uncertainties and assumptions associated with each estimate, a sensitivity analysis, and a discussion of the cumulative impact of the covered rules and actions on consumers; small businesses; regional economies; State, local, and tribal governments; local and industry-specific labor markets; and agriculture. The analyses must be conducted with best available methods and best available data that are available publicly or provided by members of the Committee.

Section 3 also specifies that the following EPA rules and actions are to be covered in the report:

- Greenhouse Gas New Source Performance Standards for Petroleum Refineries;
- Greenhouse Gas New Source Performance Standards for Utilities;
- Prevention of Significant Deterioration and Title V permitting for GHG Emissions;
- Ambient Air Quality Standards for Ozone, Particulate Matter, Sulfur Dioxide and Nitrogen Dioxide;
- Clean Air Transport Rule for 28 Eastern States;
- Boiler Maximum Available Control Technology for Major and Area Sources;
- Electric Generating Units Maximum Available Control Technology;
- Coal Combustion Residuals Rule; and
- Recent actions under the Regional Haze Program.

Section 4: Reports; Public comment

Section 4 specifies reporting and a public comment period. A preliminary report is to be made public and submitted to Congress by January 31, 2012. Public comments will be accepted on the preliminary report for 90 days. The final report is then due by August 1, 2012.

Section 5: Regulatory deferral of certain rules

Section 5 defers the promulgation and effective date of two rules that are included in the study until a date that is at least 6 months after submission of the final report. The two rules are:

- Clean Air Transport Rule for 28 Eastern States, also known as the Cross-State Air Pollution Rule;

- Electric Generating Units Maximum Available Control Technology.

Section 6: Authorization of appropriations

Section 6 specifies an authorization of \$3.5 million and corresponding offsets from the Diesel Emissions Reduction Act of 2010.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ENERGY POLICY ACT OF 2005

* * * * *

TITLE VII—VEHICLES AND FUELS

* * * * *

Subtitle G—Diesel Emissions Reduction

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[Effective on October 1, 2011, section 6(b) of H.R. 2401 provides for amendments to section 797(a) of the Energy Policy Act of 2005 (as amended and in effect on such date by section 2(e) of Public Law 111-364) as follows:]

SEC. 797. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this subtitle *\$46,000,000 for fiscal year 2012 and \$100,000,000 for each of fiscal years [2012] 2013 through 2016*, to remain available until expended.

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DISSENTING VIEWS

I. PURPOSE OF THE LEGISLATION

In hearings and the subcommittee markup, the majority repeatedly stated that this legislation is designed to help agencies improve their economic analyses of proposed and final EPA regulations and to provide a better picture of the cumulative impacts of multiple regulations affecting the same industries. An amendment during markup in full committee offered by Subcommittee Chairman Whitfield fundamentally changed the nature of the bill. Rather than comprising just a mandate for additional studies, the bill now prohibits finalizing or implementing two of the most significant EPA air quality rules proposed in decades.

The Mercury and Air Toxics Standards Rule and the Cross-State Air Pollution Rule will finally require decades-old coal-fired power plants with no modern pollution controls to install readily available pollution controls to reduce their emissions of mercury, other toxic air pollutants, fine particulates, and the pollutants that cause smog and acid rain. If EPA is allowed to implement these rules, each year they will avoid tens of thousands of premature deaths, improve the health of millions of Americans, especially children, and produce tens of billions of dollars of net benefits for the country.

The TRAIN Act would indefinitely delay these rules and would prohibit EPA from finalizing or implementing these rules until at least February 1, 2013, and likely later. The legislation eliminates existing statutory and/or court-ordered deadlines for rulemaking and establishes no new deadlines, resulting in no enforceable deadline for either rule. The legislation also prohibits EPA from finalizing the Mercury and Air Toxics rule and prohibits the Cross-State Air Pollution rule from being in effect until a date that is to be determined by the Administrator. The date can be no earlier than six months after the completion of the multi-agency analytical effort and report mandated by section 3 of the bill, which is due by August 1, 2012. As discussed below, given the number of agencies involved, the extensive analytical work required, and the inadequate funding provided for the effort, it appears highly unlikely that the report could be produced by the deadline. In addition, section 5(b)(2) extends the compliance deadline for the Cross-State Air Pollution Rule for a period equal to the period of delay in the bill's effectiveness.

Neither the Energy and Power Subcommittee nor the full Committee held any hearings on the Cross-State Air Pollution Rule or any legislative hearing on the language to block and indefinitely delay the Mercury and Air Toxics Rule and the Cross-State Air Pollution Rule. The Mercury and Air Toxics Rule was examined in a single hearing that addressed three separate EPA final or proposed rules covering different industrial sectors. These are two of the

most significant rules EPA has proposed or finalized in years to address air pollution, and there would be significant public health and economic consequences from their indefinite delay. At the full Committee markup, Ranking Member Waxman reiterated that prior to legislating, the Committee should have held hearings on the substance of the Cross-State Air Pollution Rule and the Mercury and Air Toxics Rules, as well as the effects of the proposed language to delay them indefinitely.

Several Democratic members of the Committee offered amendments during markup to improve the bill and ensure EPA retained the authority to meet its legal and statutory obligations to protect the environment and public health. These amendments were defeated, as discussed below.

II. RULES BLOCKED BY THE LEGISLATION

A. MERCURY AND AIR TOXICS STANDARDS

In the Clean Air Act Amendments of 1990, Congress adopted provisions to address toxic air pollution from power plants. Section 112(n) requires EPA to complete by 1993 a study of the hazards to public health reasonably anticipated to occur as a result of toxic air pollution from power plants. If, after considering the results of the study, EPA finds that regulation is appropriate and necessary, EPA is required to regulate power plants under the air toxics requirements of section 112.

EPA completed the study in 1998, and in December 2000, EPA concluded that it was appropriate and necessary to regulate hazardous air pollutants from power plants.¹ Power plants are by far the largest U.S. source of mercury emissions into the air. Mercury is a particular concern for women of childbearing age, infants, and children because studies have linked mercury exposure to nervous system damage, which can impair children's ability to think and learn. Power plants also release other toxic metals, such as arsenic, chromium and nickel, which can cause cancer and other health effects.

EPA's December 2000 finding triggered a requirement for EPA to finalize regulations to control toxic air pollution from power plants by December 2004, pursuant to a settlement agreement.² EPA issued the Clean Air Mercury Rule in March 2005. However, the approach taken in that rulemaking regulated only mercury, not other air toxics, and it avoided the requirement under section 112 to install maximum available control technology by establishing a trading system under section 111 instead. The D.C. Circuit vacated the rule in February 2008, stating that EPA's rationale for this approach "deploys the logic of the Queen of Hearts, substituting EPA's desires for the plain text of section 112(c)(9)."³

Twenty-one years after the Clean Air Act provisions to address this threat were adopted and eleven years after finding that regu-

¹U.S. EPA, Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units—Final Report to Congress, Volume 1 (Feb. 1998).

²U.S. EPA, Mercury and Air Toxics Standards (MATS) for Power Plants: History (online at www.epa.gov/airquality/powerplanttoxics/history.html); U.S. EPA, Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units, 65 Fed. Reg. 79825 (Dec. 20, 2000).

³*State of New Jersey v. EPA*, 517 F.3d 574, 582 (D.C. Cir. 2008).

lation is necessary and appropriate, on March 16, 2011, EPA proposed the Mercury and Air Toxics Rule to reduce power plant emissions of these hazardous air pollutants.⁴ The proposed rule would reduce emissions of mercury, preventing more than 90% of the mercury in the coal from being emitted into the air and cutting emissions of other toxic substances.⁵ EPA also estimates that the rule will reduce fine particle emissions by 29% in 2015, which will produce tremendous health benefits.⁶

For each year that the Mercury and Air Toxics Rule is delayed by this bill, there will be up to an additional 17,000 premature deaths; 11,000 non-fatal heart attacks; 120,000 cases of aggravated asthma; 12,200 hospital and emergency room visits; 4,500 cases of chronic bronchitis; 11,000 cases of acute bronchitis; and 850,000 days when people miss work.⁷ This will lead to a less healthy population and less productive economy.

EPA estimates the monetized public health benefits of this proposed rule to be between \$59 billion and \$140 billion in 2016, while costs are estimated at \$10.9 billion.⁸ EPA believes that utilities can achieve the emissions reductions without significantly affecting the availability and cost of electricity to consumers.⁹ EPA also assessed the impacts of the proposed rule on jobs and the economy, finding that more jobs will be created in the air pollution control technology production field than may be lost as the result of compliance with these proposed rules.¹⁰

B. CROSS-STATE AIR POLLUTION RULE

Clean Air Act section 110(a)(2)(D) addresses air quality problems created by facilities that are located outside of a state experiencing an air quality problem. Downwind states do not have authority to require pollution reductions from facilities located in upwind states. Thus, this provision prohibits any state from allowing its facilities to emit air pollution in amounts that will significantly contribute to downwind states' failure to meet health-based national ambient air quality standards (NAAQS).

In March 2005, EPA issued the Clean Air Interstate Rule (CAIR) to help 28 states in the eastern, central, and southern U.S. meet the health-based ambient air quality standards for fine particles and ozone by requiring emission reductions in sulfur dioxide and nitrogen oxides in upwind states. That rule was overturned by the D.C. Circuit Court of Appeals in 2008. However, the court allowed the rule to remain in place while EPA revised the rule consistent with the court's opinion, based in part on EPA's representations to

⁴U.S. EPA, 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; Proposed Rule, 76 Fed. Reg. 24976–25147 (May 3, 2011) (hereinafter "Proposed Air Toxics Rule").

⁵U.S. EPA, Fact Sheet: Proposed Mercury and Air Toxics Standards (May 4, 2011).

⁶Proposed Air Toxics Rule at 25073.

⁷U.S. EPA, Fact Sheet: Proposed Mercury and Air Toxics Standards (May 4, 2011).

⁸Proposed Air Toxics Rule at 25078.

⁹*Id.* at 24978–24979.

¹⁰*Id.* at 24979.

the court that it would move “expeditiously” to replace the rule and that such a rulemaking would take “about two years.”¹¹

EPA promulgated the Cross-State Air Pollution Rule as a replacement for CAIR on July 6, 2011.¹² The Cross-State Air Pollution Rule requires 27 states in the eastern, central, and southern U.S. to reduce power plant emissions that cause air quality problems in other states. Compared with CAIR, the Cross-State Air Pollution Rule requires greater emission reductions and is more targeted to produce air quality improvements in areas with unhealthy air quality. EPA estimates that by 2014, the Cross-State Air Pollution Rule and other federal rules will reduce sulfur dioxide emissions in the 27-state region by 73% from 2005 levels and nitrogen oxides by 54% from 2005 levels.¹³ These pollution reductions will yield between \$120 billion and \$280 billion in annual health benefits in 2014, vastly outweighing the rule’s estimated costs of \$800 million that year.¹⁴

The Cross-State Air Pollution Rule brings many areas into attainment with the 1997 and 2006 fine particle NAAQS and the 1997 ozone NAAQS by 2014. Absent the rule, in 2012, 27 counties are projected to experience air pollution at levels above the fine particle and/or ozone standards.¹⁵ With the rule, only two counties in the covered region will continue to violate the ozone or fine particle standards.¹⁶ If the rule is delayed, downwind states may have to impose more stringent controls on local businesses to make up for the effects of increased out-of-state pollution.

This rule will improve the health of millions of Americans. For each year that this rule is delayed by the bill, there will be up to an additional 34,000 premature deaths, 15,000 non-fatal heart attacks, 19,000 hospital and emergency room visits, 400,000 cases of aggravated asthma, 19,000 cases of acute bronchitis, and 1.8 million days when people miss work or school due to illness.¹⁷

C. CONCERNS REGARDING CUMULATIVE IMPACTS

Some have expressed concerns about the cumulative effect on the utility sector of these and other future EPA rules. Specifically, opponents of the rules argue that they will force utilities to shut down power plants and threaten the reliability of the electricity grid. In addition, the State of Texas and Texas utilities have voiced concerns about the impact of the Cross-State Air Pollution Rule on Texas power plants. The majority also argues that the costs of these rules are too high and that they destroy jobs.

Multiple analyses rebut the reliability concerns. The Bipartisan Policy Center found that any impacts on the reliability of the elec-

¹¹ *State of North Carolina v. EPA* (D.C. Cir. 2008) (on petitions for rehearing); *State of North Carolina v. EPA*, Reply in Support of Petition for Rehearing or Rehearing En Banc (Nov. 17, 2008).

¹² U.S. EPA, Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals; Final Rule, 76 Fed. Reg. 48208 (Aug. 8, 2011) (hereinafter “Cross-State Air Pollution Rule”).

¹³ U.S. EPA, Fact Sheet, The Cross-State Air Pollution Rule: Reducing Interstate Transport of Fine Particulate Matter and Ozone (Aug. 8, 2011).

¹⁴ Cross-State Air Pollution Rule at 48215.

¹⁵ U.S. EPA, Cross-State Air Pollution Rule, Reducing Air Pollution, Protecting Public Health (presentation) (July 18, 2011) at 5.

¹⁶ *Id.* at 15.

¹⁷ U.S. EPA, Fact Sheet, The Cross-State Air Pollution Rule: Reducing Interstate Transport of Fine Particulate Matter and Ozone (Aug. 8, 2011).

tric system due to EPA regulations are manageable and that tools are available at the federal, state, and local levels to address localized reliability risks.¹⁸ An analysis prepared for state air quality agencies concluded that utilities are well-equipped to comply with EPA rules without affecting the reliability of the electricity system.¹⁹ This analysis found that the electric power sector has access to a range of available pollution control technology options as well as experience in their installation and operation that will enable compliance with these rules.²⁰ It also found that the industry has a demonstrated ability to install a substantial number of controls in a short period of time and has access to a skilled workforce to install proven and available control technologies.²¹

Similarly, a recently updated report by M.J. Bradley and Associates concluded that the electric system will remain reliable if industry and its regulators proactively manage the transition to cleaner, more efficient power plants.²² The Bradley report found that EPA's proposed standards are achievable and well within the capability of existing pollution control technology, noting that recent binding commitments made by utilities in one of the most coal-dependent regions of the country indicate adequate generation capacity and a substantial reserve margin that will remain after these rules are in effect.²³

On July 11, 2011, 36 energy businesses and business associations, including Calpine, Constellation Energy, Entergy, Exelon, NRG Systems, Pacific Gas and Electric, and Public Service Enterprise Group, sent a letter to House leadership that reiterated these findings.²⁴ They stated that the power industry can comply with the air toxics standards for the electric utility sector without threatening electric system reliability, and they noted that the industry has already made significant investments in control technology in anticipation of the rule.²⁵

The arguments that these rules are too costly also are not supported by the available evidence. The combined annual benefits of the two rules are estimated to range from roughly \$179 billion to \$420 billion in the 2014–2016 time-frame, while the combined annual costs are estimated at \$11.7 billion.²⁶ The monetized benefits exceed the costs of these rules by at least 15 to 1 and as much as 36 to 1.

Overall, the Clean Air Act has proven that it provides benefits that far outweigh the costs. EPA examined the cumulative costs and benefits of the Clean Air Act and found that the monetary value of protecting American's health through implementing the

¹⁸ Bipartisan Policy Center, Environmental Regulation and Electric System Reliability (June 13, 2011).

¹⁹ Northeast States for Coordinated Air Use Management, Control Technologies to Reduce Conventional and Hazardous Air Pollutants from Coal-Fired Power Plants (Mar. 31, 2011).

²⁰ *Id.*

²¹ *Id.*

²² M.J. Bradley & Associates and Analysis Group, Ensuring a Clean, Modern Electric Generating Fleet while Maintaining Electric System Reliability (Aug. 2010); M.J. Bradley & Associates and Analysis Group, Ensuring a Clean, Modern Electric Generating Fleet while Maintaining Electric System Reliability; Summer 2011 Update (June 2011).

²³ M.J. Bradley & Associates and Analysis Group, Ensuring a Clean, Modern Electric Generating Fleet while Maintaining Electric System Reliability; Summer 2011 Update, 5 (June 2011).

²⁴ Letter to The Honorable John Boehner et al, from Acciona Wind Energy USA *et al* (July 11, 2011).

²⁵ *Id.*

²⁶ Proposed Air Toxics Rule at 25078; Cross-State Air Pollution Rule at 48215.

Clean Air Act is projected to reach \$2 trillion in 2020 alone.²⁷ Over the period from 1990 through 2020, the benefits of the Clean Air Act are projected to exceed the costs by a factor of more than 30 to 1.²⁸

III. AMENDMENTS OFFERED IN FULL COMMITTEE

During consideration of H.R. 2401 by the full Committee, Congresswoman Lois Capps (D-CA) offered two amendments to improve the bill. Her first amendment specified that the bill could not “delay or otherwise interfere with implementation of any statutory or other legal deadline or obligation.” The amendment also would have allowed the interagency committee established to analyze EPA rules to forego certain analyses if the committee determined that they were not feasible given available information, modeling limitations, and available funding. The Committee defeated this amendment on a voice vote.

The second Capps amendment directed the Nuclear Regulatory Commission (NRC) to require all nuclear power plants in the United States to prevent damage to reactor cores and spent fuel in the event of an extended loss of onsite power due to a natural disaster. On July 13, 2011, NRC’s Japan Task Force released the results of its systematic review of nuclear reactor safety regulations and practices in the United States in light of the accident at the Fukushima Dai-ichi nuclear power plant in Japan. The task force concluded that “a sequence of events like the Fukushima accident is unlikely to occur in the United States.”²⁹ However, the task force described the current safety regime as a “patchwork of regulatory requirements” developed “piece-by-piece over the decades” and made recommendations for how to improve safety in several areas.³⁰ In particular, the task force recommended that NRC require licensees to reevaluate each reactor’s ability to withstand earthquakes, floods and long-term loss of onsite power and upgrade structures and systems as necessary.³¹ The Committee defeated the Capps amendment on a 18–30 vote.

Ranking Member Bobby Rush (D-IL) and Congresswoman Donna Christensen (D-VI) also offered an amendment to improve the analysis of EPA regulations. First, the amendment would have provided needed balance to the interagency committee by adding representatives with expertise in public health and environmental protection, including the Chair of the Council on Environmental Quality, the Secretary of the Department of Health and Human Services, the Director of the Centers for Disease Control and Prevention, and the Director of the National Institute of Environmental Health Sciences. In addition, the amendment specified that the interagency committee had to consider the benefits of EPA rules, including changes in the incidence of asthma, birth defects, and premature mortality; impacts on air and water quality; impacts in the clean energy sector; and impacts on productivity from

²⁷ U.S. EPA, Section 812 Prospective Analysis: The Benefits and Costs of the Clean Air Act, 1990 to 2020 (Aug. 2010).

²⁸ *Id.*

²⁹ Nuclear Regulatory Commission, Recommendations for Enhancing Reactor Safety in the 2.0 Century (July 12, 2011) at vii.

³⁰ *Id.*

³¹ *Id.* at ix.

reduced absenteeism at work and school. The Committee accepted an amendment from Congressman Morgan Griffith (R-VA) clarifying that the interagency committee should examine the positive and negative impacts of the rules on public health and the environment. Nevertheless, the Committee defeated the modified Rush-Christensen amendment by a vote of 20–28.

IV. SECTION BY SECTION ANALYSIS

Section 2. Committee for the cumulative analysis of regulations that impact energy and manufacturing in the United States

H.R. 2401 establishes an interagency committee to analyze and report on the cumulative and incremental impacts of certain rules and actions of EPA. By design, the committee will focus only on the costs of regulations while ignoring the benefits to public health and the environment.

Section 2 sets forth the composition of the committee, which will include representatives of the Departments of Agriculture, Commerce, Labor, Energy, and Treasury; EPA; the Council of Economic Advisors; the Federal Energy Regulatory Commission; and the Small Business Administration, among others. With the exception of EPA, the new committee does not include any members with a focus on or expertise in public health or environmental protection. Additionally, while the Department of Energy is included in the committee, the Department's participation is limited to the Energy Information Administration, which does not have expertise in clean energy policy.

Section 3. Analyses

Section 3 of H.R. 2401 describes the analyses that the committee is required to conduct, including an estimate of the cumulative impacts of covered rules and actions. This section is fundamentally flawed in three respects: (1) it will produce an analysis that is inherently biased; (2) the analysis required is not feasible and is unlikely to produce credible results; and (3) the analysis is unnecessary.

The analysis is inherently biased

The bill instructs the committee to examine the cumulative impacts of EPA regulations on U.S. competitiveness, electricity and fuel prices, employment, and the reliability and adequacy of bulk power supply. While those are all relevant considerations, the purpose of the regulations is to protect public health and the environment by reducing pollution. Yet, the bill does not require any evaluation of the cumulative projected benefits of EPA regulations for public health and environmental protection, such as the benefits from decreased hospitalizations or the benefits of slowing climate change. Requiring an analysis that largely focuses on the cumulative costs of regulation while disregarding the benefits will necessarily produce a biased picture of whether the regulations are on net positive or negative for the country.

The analysis is infeasible and unlikely to produce credible results

H.R. 2401 requires the committee to produce a report containing a complex array of analyses of numerous rules and actions that will—or may—be finalized between now and 2030.

It is unclear how it would be possible to conduct a credible economic analysis of the impact of a regulation that has not yet been finalized. The whole point of providing for notice and comment is to allow affected industries and the public to supply information and suggest changes to improve EPA's proposed approach. While the analysis could simply be based on the proposal, there are often significant changes in response to public comment that modify the levels of control required in the final rule, changing the compliance options and atmospheric impacts, and thus changing the final costs and benefits. In a recent example, EPA made changes between the proposed and final rules to regulate toxic air pollution from industrial boilers that cut the projected costs of the rule in half.

The guess-work required would become even more extreme with respect to rules that have not yet been proposed or even contemplated. For example, the bill would require the committee to examine any change to a national ambient air quality standard revised between January 1, 2009, and December 31, 2030. Section 109 of the Clean Air Act requires EPA to review these standards every five years. It is impossible to know how EPA will consider revising the standards over the next 19 years or how technology and science will evolve to inform those revisions.

Making matters more complicated, the Clean Air Act gives state and local governments the flexibility to determine their own strategies to achieve air quality goals. Because of this flexibility afforded to state and local governments, the legislation could be interpreted to require analyses of hundreds of state and local rules that may, or may not, be developed over the next 19 years. In fact, the bill explicitly includes state and local permitting actions addressing greenhouse gases.

Even if it were possible to conduct such analyses, it could prove impossible to do so by the statutory deadlines provided for in the legislation: A draft no later than January 31, 2012, with a final report no later than August 1, 2012, with a 90 day period for public comment between the draft and final reports.

The history of these types of analyses suggests that this time-frame is likely to be unrealistic. For example, EPA has prepared two studies of the cumulative costs and benefits of the Clean Air Act. The first study had a six-year process of study development and outside expert review.³² The second study began in July of 2001, the analytical design plan was reviewed in 2003, and the study was not completed until 2011.³³ In another example, in February 2003, Congress charged the National Academy of Sciences to evaluate the effects of just two EPA rules relating to regulation of

³²U.S. EPA, *The Benefits and Costs of the Clean Air Act, 1990 to 2010* (Nov. 1999).

³³U.S. EPA, *Section 812 Prospective Analysis: The Benefits and Costs of the Clean Air Act, 1990 to 2020* (Aug. 2010).

stationary sources.³⁴ The Academy did not complete its report until July 2006.³⁵

The limited resources authorized by the legislation also reduce the committee's ability to produce a credible and useful report. The bill authorizes just \$3.5 million for 11 departments and agencies to implement the legislation over an approximately 14-month time-frame, depending upon the date of enactment. These funds could be depleted if just a few employees per department or agency worked on the project, leaving virtually no resources for the data analysis, economic modeling, computer runs, and other analytic work that would be necessary to produce a substantive report.

The analysis is unnecessary

The analysis proposed by this bill also is unnecessary and redundant, as EPA and other federal agencies already must meet numerous statutory and administrative requirements for economic analysis of regulations.

Existing requirements for analysis of impacts and response to public comments in EPA actions are established by the Administrative Procedure Act, the Paperwork Reduction Act, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, the Unfunded Mandates Reform Act, specific environmental statutes, executive orders on regulatory planning and review, requirements of the Office of Management and Budget, Circular A-4, and other sources.³⁶ According to the GAO, these requirements are "clearly voluminous and require a wide range of procedural, consultative, and analytical action on the part of the agencies."³⁷ Because of those requirements, the GAO has found that, on average, promulgation of a major rule is a four-year process.³⁸

Executive Order 12866 requires federal agencies to perform regulatory impact analyses (RIAs) of all rules it deems to be "significant" and to submit these analyses to the Office of Management and Budget for review. EPA has completed RIAs for the final rules covered by the TRAIN Act, in accordance with OMB requirements. In addition, section 312 of the Clean Air Act requires EPA to conduct periodically a comprehensive analysis of the impact of Clean Air Act requirements on public health, the economy, and the environment.

Section 4. Reports; Public comment

This section requires a preliminary report by January 31, 2012, and a final report by August 1, 2012. The committee is required to provide for 90 days of public comment on the preliminary report. This would leave just three months to complete the final report.

³⁴ PL No: 108-7, Consolidated Appropriations Resolution, 2003 (Feb. 20, 2003).

³⁵ National Academies of Science, *New Source Review for Stationary Sources of Air Pollution* (July 2006).

³⁶ Congressional Research Service, Report RL32240, "The Federal Rulemaking Process: An Overview" (Feb. 22, 2011).

³⁷ Government Accountability Office, *Federal Rulemaking: Procedural and Analytical Requirements at OSHA and Other Agencies*, Testimony before the Committee on Education and the Workforce (June 14, 2001).

³⁸ Government Accountability Office, *Federal Rulemaking: Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews* (Apr. 2009) (GA0-09-205).

Section 5. Regulatory deferral of certain rules

As originally introduced, H.R. 2401 did not include any provisions to delay EPA regulations pending the completion of the report proposed by the bill. However, industry urged the bill's sponsors to include such provisions. For example, in testimony before the Energy and Power Subcommittee, Dirk Krouskop of MeadWestvaco encouraged the Subcommittee "to move to swift passage of the TRAIN Act while legislatively staying significant rulemakings, such as Boiler MACT, until such time as the full economic impact of the cumulative regulatory burden facing the regulated community is understood."³⁹

During the Full Committee markup of this bill, Subcommittee Chairman Ed Whitfield offered an amendment to block and indefinitely delay the Mercury and Air Toxics Standards and the Cross-State Air Pollution Rules, which was adopted on a vote of 32 to 18.

As discussed above, the bill as amended would prohibit EPA from finalizing or implementing these rules until at least February 1, 2013, and likely later. It also would provide for indefinite delay in finalizing these rules by eliminating existing statutory and/or court-ordered deadlines for rulemaking and establishing no new deadlines, resulting in no enforceable deadline for either rule.

Section 6. Authorization of appropriations

Section 6 of the bill funds the provisions of the TRAIN Act by cutting the authorization for funding for the Diesel Emissions Reduction Program (DERA) by \$54 million in 2012, which is \$4 million below the most recent appropriated funding level for DERA. DERA, as established under the Energy Policy Act of 2005, provides EPA grant and loan authority for promoting diesel emission reductions.⁴⁰ Since 2008, EPA has awarded more than 500 grants for diesel emission reduction projects nationwide.⁴¹

The DERA program has proven popular and successful. For example, on March 28, 2011, approximately 500 groups, ranging from the American Lung Association to Caterpillar, Inc. to the Western Growers to the National Association of Clean Air Agencies, wrote to the House Appropriations Committee requesting support for the program, stating:

Since enactment in 2005, DERA has been successful from an economic, environmental and public health perspective. The DERA program has been responsible for the creation and retention of local U.S. jobs that involve manufacturing, installation and servicing of emissions related technologies. In a FY2008 Report to Congress, the Environmental Protection Agency (EPA) estimates that for every dollar spent on the DERA program, an average of more than \$20 in health benefits are generated. Every

³⁹Testimony of Dirk J. Krouskop, Vice President, MeadWestvaco, before the Subcommittee on Energy and Power, Committee on Energy and Commerce, Hearing on Recent EPA Rulemakings Relating to Boilers, Cement Manufacturing Plants, and Utilities, 112th Cong. (Apr. 15, 2011).

⁴⁰Energy Policy Act of 2005, Title VII, Subtitle G.

⁴¹U.S. Environmental Protection Agency, *DERA Grant Programs* (online at <http://www.epa.gov/cleandiesel/grantfund.htm>).

state in the nation now has a diesel retrofit program and benefits from DERA funding.⁴²

With additional funding, DERA could provide additional tangible benefits to public health. Instead, this bill redirects funding away from DERA to support a new government bureaucracy to produce redundant and unreliable analyses.

For the reasons stated above, we dissent from the views contained in the Committee's report.

HENRY A. WAXMAN.
DIANA DEGETTE.
JAN SCHAKOWSKY.
G.K. BUTTERFIELD.
EDOLPHUS TOWNS.
EDWARD J. MARKEY.
ELIOT L. ENGEL.
JAY INSLEE.
BOBBY L. RUSH.
LOIS CAPP.
KATHY CASTOR.
MIKE DOYLE.
DORIS O. MATSUI.
DONNA CHRISTENSEN.
TAMMY BALDWIN.
ANNA G. ESHOO.

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⁴²Letter to Rep. Mike Simpson and Rep. James Moran from the DERA coalition (Mar. 28, 2011).