

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 1633) TO ESTABLISH A TEMPORARY PROHIBITION AGAINST REVISING ANY NATIONAL AMBIENT AIR QUALITY STANDARD APPLICABLE TO COARSE PARTICULATE MATTER, TO LIMIT FEDERAL REGULATION OF NUISANCE DUST IN AREAS IN WHICH SUCH DUST IS REGULATED UNDER STATE, TRIBAL, OR LOCAL LAW, AND FOR OTHER PURPOSES

DECEMBER 7, 2011.—Referred to the House Calendar and ordered to be printed

Mr. WEBSTER, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 487]

The Committee on Rules, having had under consideration House Resolution 487, by a record vote of 7 to 4, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 1633, the Farm Dust Regulation Prevention Act of 2011, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Energy and Commerce. The resolution waives all points of order against consideration of the bill. The resolution provides that the amendment in the nature of a substitute recommended by the Committee on Energy and Commerce now printed in the bill shall be considered as original text for the purpose of amendment and shall be considered as read. The resolution waives all points of order against the committee amendment in the nature of a substitute. The resolution makes in order only those amendments printed in this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or the Committee of the Whole. The resolution waives all points of order against the amendments printed in this report. Finally, the resolution provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

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

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

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

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 168

Motion by Ms. Slaughter to report an open rule. Defeated: 4–6.

Majority Members	Vote	Minority Members	Vote
Ms. Foxx	Nay	Ms. Slaughter	Yea
Mr. Bishop of Utah	Nay	Mr. McGovern	Yea
Mr. Nugent	Nay	Mr. Hastings of Florida	Yea
Mr. Scott of South Carolina	Nay	Mr. Polis	Yea
Mr. Webster	Nay		
Mr. Dreier, Chairman	Nay		

Rules Committee record vote No. 169

Motion by Ms. Slaughter to make in order and provide the necessary waivers for amendment #4, offered by Rep. Eshoo, which would require that if the EPA Administrator and the Clean Air Scientific Advisory Committee find that the exemption in this bill would increase the incidence of asthma attacks, respiratory disease, cardiovascular disease, or premature mortality, then the bill's exemption from the Clean Air Act for particulate pollution has no effect. Defeated: 4–7.

Majority Members	Vote	Minority Members	Vote
Ms. Foxx	Nay	Ms. Slaughter	Yea
Mr. Bishop of Utah	Nay	Mr. McGovern	Yea
Mr. Woodall	Nay	Mr. Hastings of Florida	Yea
Mr. Nugent	Nay	Mr. Polis	Yea
Mr. Scott of South Carolina	Nay		
Mr. Webster	Nay		
Mr. Dreier, Chairman	Nay		

Rules Committee record vote No. 170

Motion by Mr. Bishop of Utah to report the rule. Adopted: 7–4.

Majority Members	Vote	Minority Members	Vote
Ms. Foxx	Yea	Ms. Slaughter	Nay
Mr. Bishop of Utah	Yea	Mr. McGovern	Nay
Mr. Woodall	Yea	Mr. Hastings of Florida	Nay
Mr. Nugent	Yea	Mr. Polis	Nay
Mr. Scott of South Carolina	Yea		
Mr. Webster	Yea		

Majority Members	Vote	Minority Members	Vote
Mr. Dreier, Chairman	Yea		

SUMMARY OF AMENDMENTS MADE IN ORDER

1. Rush (IL): Would clarify that nothing in the bill precludes the EPA Administrator from enforcing National Ambient Air Quality Standards (NAAQS) for PM_{2.5} and would delete section 3, which allows the EPA to regulate “nuisance dust” in areas where states and localities do not do so if it substantially hurts public health and if the benefits of applying standards would outweigh the costs. (10 minutes)

2. Christensen (VI): Would allow the EPA the authority under the Clean Air Act to step in and take action to reduce dangerous particle pollution if state, local, or tribal laws are not sufficient to protect public health. (10 minutes)

3. Crawford (AR): Would direct the Environmental Protection Agency Administrator to consult with the Secretary of Agriculture when modifying National Ambient Air Quality Standards with respect to ‘nuisance dust’ under exceptions provided in Sec. 132(b) of the Farm Dust Regulation Prevention Act of 2011. (10 minutes)

4. Markey, Edward (MA): Would ensure that particulate matter containing arsenic and other heavy metals that are hazardous to human health is not nuisance dust and remains subject to the Clean Air Act. (10 minutes)

5. Waxman (CA): Would require that particulate pollution produced from mining activities is not defined as “nuisance dust” and thus remains subject to the Clean Air Act. (10 minutes)

6. Flake, Jeff (AZ): Would add sense of Congress language regarding an approach to excluding so-called “exceptional events” (like massive dust storms that are not controllable or preventable) from determinations of whether an area is in compliance with the coarse particulate matter standard. (10 minutes)

7. Schock (IL), Capito (WV): Would require the EPA to take agriculture jobs and the economic impact on the agriculture industry into account before they issue any new regulations relating to agriculture. If a proposed regulation was found to cause the loss of more than 100 agriculturally related jobs or a decrease in more than \$1,000,000 in agriculturally related economic activity then EPA would have to give notice to the State’s Congressional Delegation, Governor, and Legislature, and also hold a public hearing in the impacted State. (10 minutes)

8. Green, Al (TX): Would require EPA to provide a report of the increase or decrease in the number of jobs as a result of enactment of the bill. (10 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

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

In section 2, strike “applicable to particulate matter with an aerodynamic diameter greater than 2.5 micrometers” and insert “for PM₁₀”.

At the end of section 2, add the following: “Nothing in this Act precludes the Administrator from proposing, finalizing, imple-

menting, or enforcing the national primary ambient air quality standard or the national secondary ambient air quality standard for PM_{2.5}.”.

Strike section 3.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CHRISTENSEN OF THE VIRGIN ISLANDS OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 132(b) of the Clean Air Act, as proposed to be added by section 3 of the bill, after “is not regulated under State, tribal, or local law” insert “at a level requisite to protect public health (as determined by the Administrator),”.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CRAWFORD OF ARKANSAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 132(b) of the Clean Air Act, as proposed to be added by section 3 of the bill, after “insofar as the Administrator” insert “, in consultation with the Secretary of Agriculture,”.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MARKEY OF MASSACHUSETTS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 132(c) of the Clean Air Act, as proposed to be added by section 3 of the bill, strike “and” at the end of paragraph (1), strike the period at the end of paragraph (2) and insert “; and”, and add at the end the following paragraph:

“(3) the term ‘nuisance dust’ does not include particulate matter containing arsenic or other heavy metals that are hazardous to human health.”.

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

In section 132(c) of the Clean Air Act, as proposed to be added by section 3 of the bill, strike “and” at the end of paragraph (1), strike the period at the end of paragraph (2) and insert “; and”, and add at the end the following paragraph:

“(3) the term ‘nuisance dust’ does not include any particulate matter produced from mining activities.”.

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

At the end of the bill, add the following:

SEC. 4. SENSE OF CONGRESS.

It is the sense of the Congress that the Administrator of the Environmental Protection Agency should implement an approach to excluding so-called “exceptional events”, or events that are not reasonably controllable or preventable, from determinations of whether an area is in compliance with any national ambient air quality standard (NAAQS) applicable to coarse particulate matter that—

- (1) maximizes transparency and predictability for States, tribes, and local governments; and
- (2) minimizes the regulatory and cost burdens States, tribes, and local governments bear in excluding such events.

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

At the end of the bill, add the following:

SEC. 4. IMPACTS OF EPA REGULATORY ACTIVITY ON EMPLOYMENT AND ECONOMIC ACTIVITY IN THE AGRICULTURE COMMUNITY.

(a) ANALYSIS OF IMPACTS OF ACTIONS ON EMPLOYMENT AND ECONOMIC ACTIVITY IN THE AGRICULTURE COMMUNITY.—

(1) ANALYSIS.—Before taking a covered action, the Administrator shall analyze the impact, disaggregated by State, of the covered action on—

(A) employment levels in the agriculture industry; and

(B) agricultural economic activity, including estimated job losses and decreased economic activity related to agriculture.

(2) ECONOMIC MODELS.—

(A) IN GENERAL.—In carrying out paragraph (1), the Administrator shall utilize the best available economic models.

(B) ANNUAL GAO REPORT.—Not later than December 31 of each year, the Comptroller General of the United States shall submit to Congress a report on the economic models used by the Administrator to carry out this subsection.

(3) AVAILABILITY OF INFORMATION.—With respect to any covered action, the Administrator shall—

(A) post the analysis under paragraph (1) as a link on the main page of the public Internet Web site of the Environmental Protection Agency;

(B) request the Secretary of Agriculture to post the analysis under paragraph (1) as a link on the main page of the public Internet Web site of the Department of Agriculture; and

(C) request that the Governor of any State experiencing more than a de minimis negative impact post such analysis in the Capitol of such State.

(b) PUBLIC HEARINGS.—

(1) IN GENERAL.—If the Administrator concludes under subsection (a)(1) that a covered action will have more than a de minimis negative impact on agricultural employment levels or agricultural economic activity in a State, the Administrator shall hold a public hearing in each such State at least 30 days prior to the effective date of the covered action.

(2) TIME, LOCATION, AND SELECTION.—A public hearing required under paragraph (1) shall be held at a convenient time and location for impacted residents. In selecting a location for such a public hearing, the Administrator shall give priority to locations in the State that will experience the greatest number of job losses.

(c) NOTIFICATION.—If the Administrator concludes under subsection (a)(1) that a covered action will have more than a de minimis negative impact on agricultural employment levels or agricultural economic activity in any State, the Administrator shall give notice of such impact to the State’s Congressional delegation, Governor, and Legislature at least 45 days before the effective date of the covered action.

(d) DEFINITIONS.—In this section, the following definitions apply:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) COVERED ACTION.—The term “covered action” means any of the following actions taken by the Administrator under the Clean Air Act (42 U.S.C. 7401 et seq.) relating to agriculture and the national primary ambient air quality standard or the national secondary ambient air quality standard for particulate matter:

(A) Issuing a regulation, policy statement, guidance, response to a petition, or other requirement.

(B) Implementing a new or substantially altered program.

(3) MORE THAN A DE MINIMIS NEGATIVE IMPACT.—The term “more than a de minimis negative impact” means the following:

(A) With respect to employment levels, a loss of more than 100 jobs related to the agriculture industry. Any offsetting job gains that result from the hypothetical creation of new jobs through new technologies or government employment may not be used in the job loss calculation.

(B) With respect to economic activity, a decrease in agricultural economic activity of more than \$1,000,000 over any calendar year. Any offsetting economic activity that results from the hypothetical creation of new economic activity through new technologies or government employment may not be used in the economic activity calculation.

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE AL GREEN
OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following section:

SEC. 4. REPORT ON EFFECT ON JOBS.

Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall transmit to Congress a report estimating the increase or decrease in the number of jobs in the United States that will occur as a result of the enactment of this Act (including the amendment to the Clean Air Act (42 U.S.C. 7401 et seq.) made by section 3 of this Act).