



Legislative Bulletin.....December 8, 2011

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H.R. 1633 – Farm Dust Regulation Prevention Act of 2011

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Order of Business: The bill is scheduled to be considered on Thursday, December 8, 2011, under a structured rule, [H.Res. 487](#), that provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Energy and Commerce, and makes in order the eight amendments summarized in this Legislative Bulletin. The rule also provides for one motion to recommit.

Summary: H.R. 1633 would amend the Clean Air Act to prohibit the Administrator of the Environmental Protection Agency (EPA) from proposing, finalizing, implementing, or enforcing any regulation revising the [National Primary Ambient Air Quality Standard](#), or the national secondary ambient air quality standard, applicable to particulate matter with an aerodynamic diameter greater than 2.5 micrometers, for at least one year after the date of enactment.

This legislation does not prohibit a state, tribal or local government from regulating nuisance dust if they so choose.

The legislation defines nuisance dust as particulate matter:

- “Generated from natural sources, unpaved roads, agricultural activities, earth moving, or other activities typically conducted in rural areas; or
- “Consisting primarily of soil, other natural or biological materials, windblown dust, or some combination thereof.”

Additional Background: The Environmental Protection Agency is considering a revision to the National Ambient Air Quality Standards (NAAQS) for Coarse Particulate Matter. Coarse Particulate Matter is more commonly known as dust.

The Environmental Protection Agency (EPA) currently regulates [Coarse Particulate Matter](#) under the Clean Air Act. These regulations were originally targeted at soot, but a

recent [Draft Policy Assessment](#) is considering new, more stringent standards for regulating Coarse Particulate Matter (PM10), or “dust,” that would be devastating to rural America.

Dust is a necessary byproduct of agricultural activity, and farmers have developed best-practices to combat it because of their incentive to conserve their land and protect their families’ well-being. Many activities essential to farming and agribusiness involve dust, including driving down an unpaved road.

The EPA contends that it has the authority to regulate farm dust as part of the National Ambient Air Quality Standards established under the Clean Air Act. The EPA is considering implementing regulations that could change the current standard from 150 $\mu\text{g}/\text{m}^3$ to 65-85 $\mu\text{g}/\text{m}^3$, which would push many areas into or near “nonattainment.” This is unreasonable given the likelihood that once an area is designated as nonattainment, activities such as tilling soil, harvesting crops, moving livestock, and driving down unpaved roads are likely to become regulated activities, subject to fines of \$37,500 a day for violations.

The EPA acknowledges that more stringent standards are not necessary to protect public health. In fact, EPA’s own assessment acknowledges scientific uncertainty in the justification to change the current standard. In contrast, making the standard more stringent would prevent job creation, raise input costs for farmers, and greatly slow economic development throughout rural America.

Rep. Noem offered [amendment #563](#) to the Full Year Continuing Appropriations Act. This amendment would have prohibited funding made to modify the national primary ambient air quality standard or the national secondary ambient air quality standard applicable to coarse particulate matter under section 109 of the Clean Air Act. This amendment was agreed to by a [roll call vote of 255-168](#).

Additionally, Rep. Noem led a bipartisan letter to EPA Administrator Lisa Jackson, [signed by 101 Members of Congress](#).

The RSC Golden Turkey Award highlighted Rep. Noem’s efforts to counter the EPA regulation of dust in the April 2011 award “[All We Are Is Dust In the Wind](#).” The EPA should have just [listened to Kansas](#).

Amendments Made In Order: [H.Res. 487](#) makes in order the below amendments. Each amendment is subject to ten minutes of debate.

Rush (D-IL). The amendment states that the legislation does not prohibit the EPA from enforcing NAAQS for PM 2.5. It would also allow the EPA to regulate nuisance dust anywhere. The amendment text can be [viewed here](#).

Del. Christensen (D-VI). This amendment would allow the EPA to regulate “nuisance dust” in cases where the Administrator determines that state, local, or tribal laws are not

meeting a “level requisite to protect public health.” The amendment text can be [viewed here](#).

Crawford (R-AR). When regulating “nuisance dust,” the EPA would be required to consult with the Secretary of Agriculture. The amendment text can be [viewed here](#).

Markey (D-MA). The amendment would allow the EPA to regulate “arsenic and other heavy metals that are hazardous to human health.” The amendment text can be [viewed here](#).

Waxman (D-CA). The amendment would allow the EPA to regulate dust produced from mining activities. The amendment text can be [viewed here](#).

Flake (R-AZ). The amendment would add a sense of 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:

- “Maximizes transparency and predictability for States, tribes, and local governments; and
- “Minimizes the regulatory and cost burdens States, tribes, and local governments bear in excluding such events.”

The amendment text can be [viewed here](#).

Schock (R-IL) & Capito (R-WV). Before issuing agriculture regulations, the amendment would direct the EPA to analyze the impact of employment levels and economic activity in the agriculture industry. This will be done on a state-by-state basis. This information will be made available on the main webpage of the EPA. The EPA Administrator will also ask the Department of Agriculture to post this information on the main webpage. The Administrator will also be required to request that the Governor of any state that would experience a negative impact from the proposed EPA regulation to post the EPA’s analysis in their state Capitol.

If the Administration determines there will be a negative impact on agricultural employment or activity in a state, the Administrator shall hold a public hearing in each state at least 30 days prior to the effective date of the proposed regulation. When selecting a location for this hearing, the Administrator shall give priority to locations that will experience number of job losses.

If the Administration determines there will be a negative impact on agricultural employment or activity in a state, the Administrator shall notify the state’s congressional delegation, Governor and Legislature at least 45 days before the effective date of the proposed regulation. The amendment requires the Comptroller General to submit an annual report to Congress on the economic models used by the agency to carry out this economic impact. The amendment text can be [viewed here](#).

Green (D-TX). The amendment requires the EPA to transmit a report to Congress estimating the increase or decrease in jobs that will occur as a result of this legislation. This report is due within 180 days of enactment. The amendment text can be [viewed here](#).

Outside Groups Supporting:

National Taxpayers Union – *scoring as a key vote*

Additionally, [linked here are 194 organizations](#) that support passage of H.R. 1633.

Committee Action: H.R. 1633 was introduced April 15, 2011, and was referred to the Energy and Commerce Subcommittee on Energy and Power. The subcommittee held a hearing on October 25, 2011. The full committee met on November 29, 2011, and favorably reported the legislation, as amended, by a [roll call vote of 33-16](#).

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: A report from CBO is unavailable.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: According to the Committee Report, H.R. 1633 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The Committee Report can be [found here](#).

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The legislation contains no earmarks.

Constitutional Authority: Rep. Noem’s statement of constitutional authority states: “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 3, the Commerce Clause.” The statement can be [viewed here](#).

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