



Legislative Bulletin.....September 22, 2011

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H.R. 2401—TRAIN Act

H.R. 2401—The Transparency in Regulatory Analysis of Impacts on the Nation (TRAIN) Act of 2011 (Rep. Sullivan, R-OK)

Order of Business: The bill is scheduled to be considered on Thursday, September 22, 2011, under a structured rule ([H.Res.406](#)) that allows for two hours of general debate, the consideration of 12 amendments made in order under the rule, and allows for one motion to recommit.

Summary: The TRAIN Act is intended to require the federal government to evaluate how the cumulative impacts of various regulations proposed or implemented by the Environmental Protection Agency (E.P.A.) would impact the economy. The bill would establish an interagency committee to estimate the cumulative economic impact (jobs, energy prices, and reliability) of regulations developed in the name of “global warming.” Additionally, the bill would delay two proposed EPA rules regarding utility boilers and addressing interstate emissions for at least six months after the report is released.

Specifically, H.R. 2401 would require the President to establish a 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 the cumulative and incremental impacts of certain rules and actions of the Environmental Protection Agency.” The committee will consist of eleven cabinet level members, including the EPA Administrator, and will be chaired the Secretary of Commerce. The Committee would terminate within 60 days of producing a final report to Congress by August 1, 2012.

The report would require the Committee to conduct analyses for the years 2016, 2020, and 2030 that evaluates the cumulative impact of covered rules that are promulgated as final regulations on or before January 1, 2012, in combination with covered actions, and rules that have not been promulgated as final regulations on or before January 1, 2012. Additionally, the committee is required to evaluate the incremental impacts of each covered rule not promulgated as a final regulation on or before January 1, 2012 with specific consideration to:

- ◆ “the global economic competitiveness of the United States, particularly with respect to energy intensive and trade sensitive industries;
- ◆ “other cumulative costs and cumulative benefits, including evaluation through a general equilibrium model approach;
- ◆ “any resulting change in national, State, and regional electricity prices;

- ◆ “any resulting change in national, State, and regional fuel prices;
- ◆ “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
- ◆ “the reliability and adequacy of bulk power supply in the United States.”

The bill also requires a discussion of uncertainties and assumptions associated with each estimate, a sensitivity analysis, and cumulative impact of the covered rules and covered actions on:

- ◆ “consumers;
- ◆ “small businesses;
- ◆ “regional economies;
- ◆ “state, local, and tribal governments;
- ◆ “local and industry-specific labor markets;
- ◆ “agriculture; and
- ◆ “key uncertainties associated with each topic.”

The bill defines the “covered rules” implemented by the EPA to be the final published rules:

- ◆ Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone’, published at 75 Fed. Reg. 45210 (August 2, 2010).
- ◆ National Ambient Air Quality Standards for Ozone’, published at 75 Fed. Reg. 2938 (January 19, 2010).
- ◆ 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).
- ◆ National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers’, published at 76 Fed. Reg. 15554 (March 21, 2011).
- ◆ 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.
- ◆ 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).
- ◆ Primary National Ambient Air Quality Standard for Sulfur Dioxide’, published at 75 Fed. Reg. 35520 (June 22, 2010).
- ◆ Primary National Ambient Air Quality Standards for Nitrogen Dioxide’, published at 75 Fed. Reg. 6474 (February 9, 2010).

Additionally, covered rules include any EPA rule or guideline promulgated under the Clean Air Act to address climate change, any rule or guideline promulgated by the Administrator of the Environmental Protection Agency, a state, a local government, or a permitting agency under specific provisions of the Clean Air Act or any rule establishing or modifying a national ambient air quality standard under section 109 of the Clean Air Act.

The bill requires the Committee to produce a preliminary report on the findings by January 31, 2012 to the House Energy and Commerce Committee and Senate Committee on the Environment

and Public Works and allow a public comment period of ninety days after its submission. A final report must be completed by August 31, 2012.

The bill prohibits the EPA from issuing a final on the maximum achievable control technology (MACT) standard and the cross-state air pollution rule (CSAPR) until at least six months after the final report is released.

Finally, the bill authorizes appropriations of \$3,500,000 to carryout the study though the Department of Commerce and EPA. The bill offsets the cost by reducing funding for the Diesel Reduction Act ([DERA](#)) of 2010 reauthorized late last year.

Additional Background: Some conservatives have expressed concerns about the cumulative effect on the utility sector of the over dozen EPA rules that have been enacted or proposed during the Obama administration. Many conservatives argue these rules will force utilities to shut down coal fired power plants, threaten the reliability of the electricity grid, raise the cost of energy on American consumers, and cost American jobs. Rep. Carter (R-TX) recently wrote an [op-ed](#) discussing the potential impact of job losses. Even the EPA has estimated one regulation, the Utility Maximum Achievable Control Technology rule (Utility MACT), will increase the cost of producing electricity in the U.S. by approximately \$10.9 billion each year. In addition, they would increase electricity prices for consumers by 3.7% in 2015, 2.6% in 2020, and 1.9% in 2030.

Additional Background EPA Rules:

- ◆ Greenhouse Gas Permitting Rules: After releasing an endangerment finding under the Clean Air Act, the EPA has begun the process of regulating [CO2 emissions](#) from stationary sources by requiring facilities that emit more than 25,000 tons of CO2-equivalent per year to report their emissions to the EPA, and requires newly constructed or modified facilities that emit more than 75,000 tons per year to obtain greenhouse gas permits. These rules mostly affect larger energy-intensive companies first (still over 17,000 facilities), including fossil fuel power plants and petroleum refineries, but could potentially impact millions of [smaller entities](#) after 2016. The EPA itself estimates a cost of [\\$115 million](#) in the first year for those initial regulations, with a [Heritage study](#) of the expected impact of all EPA regulations of CO2 finding a total cost of nearly \$7 trillion in lost GDP by 2029 and annual job losses of 800,000 for several years.
- ◆ Boiler MACT Rules: The EPA has finalized rules to reduce pollution from industrial boilers used at oil refineries, chemical plants, paper mills and other factories. The [final rules](#) would require costly new pollution controls, Maximum Achievable Control Technology (MACT), on large boilers, and new periodic tune-ups for smaller boilers. These new rules have an [EPA estimated](#) cost of \$2.1 billion a year, which will have an immediate impact on companies' bottom lines and ability to retain workers during this period of sustained unemployment. The EPA has announced that it is delaying implementation of the final rules in order to reconsider aspects of them, and it will be promulgating updated proposed rules in October 2011.
- ◆ Utility MACT Rule: The EPA [proposed standards](#) in March 2011 to limit mercury and other pollutant emissions from new and existing coal and oil power plants. Approximately 44% of existing power coal and oil power plants would be required to install advanced pollution control equipment at an EPA estimated cost of [\\$11 billion annually](#). The regulation is expected to be finalized in November, and utilities must be in

compliance within three years (possible extension to four) or shut down their plant. The Wall Street Journal has reported that government regulators have projected that up to [8% of the U.S.'s power generation capacity](#) could be at risk of shutdown by 2018.

- ◆ Ozone National Ambient Air Quality Standards (NAAQS): Ozone is one of the six common pollutants given a National Ambient Air Quality Standard under the Clean Air Act. In January 2010, the EPA proposed a [revised standard](#) for ozone. The new, harsh standard would have resulted in up to 96% of counties that currently monitor ozone to take action to reduce ozone emissions. As reported by [CRS](#), “controlling ozone pollution is more complicated than controlling many other pollutants. . . . There are literally hundreds of millions of sources of the pollutants of concern and control strategies require implementation of a wide array of measures.” This results in higher costs; the EPA estimated that its proposed standard would cost \$19 to \$90 billion annually in 2020. The Manufacturers Alliance estimated it could cost 7.3 million U.S. jobs. On September 2nd, President Obama requested that the EPA withdraw the revised standard, which it did.
- ◆ Cross-State Air Pollution Rule (Clean Air Transport): In July 2011, the EPA released a [final rule to](#) address pollution emissions that cause air quality problems in downwind states. The rule requires 31 states and DC to reduce and cap power plant emissions that may cross state lines through the adoption of measures specified by the EPA or separate measures developed by each state. The rule also provides a cap and trade regime for covered pollutants within states and, to a limited extent, among states. The rule has an EPA-estimated cost of \$3 billion in 2012 and \$2.4 billion in 2014. A study by National Economic Research Associates found that the rule will raise electricity rates by approximately [12% nationwide](#), and by more than 23% in certain regions. The Brattle Group estimates the rule could cost \$130 billion by 2015. Further, the EPA has warned that it intends to propose strengthening the rule in 2011 to tighten regulation of interstate emissions as the National Ambient Air Quality Standards are amended.
- ◆ Coal Ash Rule: Coal combustion residuals (CCRs), commonly referred to as coal ash, are produced when coal is burned to produce electricity. Approximately 55% of these materials are disposed of in landfills or impoundments and the other 43% of them are [recycled](#) for savings of \$5-10 billion. The EPA contends that it has the authority to regulate CCRs as hazardous waste under the Resource Conservation and Recovery Act. The [proposed rule](#) - despite being the subject of EPA rulings on four prior occasions (once during the Clinton Administration) – would cost [billions](#) in increased costs for the millions of consumers that rely on coal powered plants to heat their homes and threaten the nation’s grid capacity. The Utility Solid Waste Activities Group estimates that the most extreme option EPA is considering would increase compliance costs by \$55 to \$75 billion. All this despite the fact that CCRs have been the subject of several past EPA rulings and that the EPA stated in 2000 that “The agency has concluded that these wastes do not warrant regulation . . .”
- ◆ Sulfur Dioxide NAAQS: Similar to its rule on ozone pollution, the EPA has released a [final revised standard](#) for the sulfur dioxide National Ambient Air Quality Standard. This is the first revision to the standard since originally set in 1971. Under the old standard, sulfur dioxide emissions have fallen by 56% since 1980. The EPA estimated that its more stringent standard would cost between \$1.8 and \$6.8 billion annually.

- ◆ Nitrogen Dioxide NAAQS: Also similar to its rule on ozone pollution, the EPA has released a [final revised standard](#) for the nitrogen dioxide National Ambient Air Quality Standard. This is the first revision to the standard since originally set in 1971, a standard that all areas currently meet. The EPA released its revised standard in spite of the 77% decrease in nitrogen dioxide emissions since 1990.
- ◆ Review of Secondary NAAQS for NO_x and SO_x: National Ambient Air Quality Standards include both a primary regulation, to protect human health, and a secondary regulation, to prevent environmental or property damage. The EPA is currently [proposing revisions](#) to its approach to the secondary standards for nitrogen and sulfur oxides in order to prevent perceived damage to lakes and streams. This is the first time the EPA has considered revisions to its secondary standards since originally set, and the first time secondary standards have been considered separately from primary standards. The EPA is currently proposing to engage in a 5-year pilot program to collect and analyze data to prepare to set a stronger multi-pollutant secondary standard during its next NAAQS review.
- ◆ Farm Dust Rule: The EPA currently regulates [Coarse Particulate Matter](#) (airborne particles) under the Clean Air Act. These regulations were originally targeted at soot, but a recent [Draft Policy Assessment](#) has proposed revising the size of particulate regulated by more than 50%, ending a decades-long exemption for agricultural dust. Dust is a necessary byproduct of agricultural activity and farmers have developed best-practices to combat it because of their obvious incentive to conserve their land and protect their families' wellbeing. According to a [letter](#) from 21 Senators on the issue, "excessive dust control measures could be imposed which could slow economic development and impose significant costs to farmers and businesses." The EPA contends that it has the authority to regulate farm dust as part of the National Ambient Air Quality Standards established in the Clean Air Act.

Groups in Support: Freedom Works ([Key Vote](#)); U.S Chamber (Key Vote); Citizens Against Government Waste (Key Vote), Let Freedom Ring,

Committee Action: The bill was introduced on June 24, 2011, and referred to the Committee on Energy and Commerce. On July 13, 2011, the full Committee held a mark-up and ordered the bill to be reported favorably by a vote of [33-13](#).

Administration Position: "The Administration strongly [opposes](#) H.R. 2401, which would block two landmark public health regulations under the Clean Air Act (CAA) and require the preparation of costly, unnecessary, and redundant reports. While the Administration strongly supports careful analysis of the economic effects of regulation, the approach taken in H.R. 2401 would slow or undermine important public health protections."

Cost to Taxpayers: According to CBO, 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.”

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? No.

Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10th Amendment? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? Committee Report [112-208](#) states H.R. 2401 is in compliance with clause 9(e), 9(f), and 9(g) of rule XXI, and contains no earmarks, limited tax benefits, or limited tariff benefits.

Constitutional Authority: The Congressional Record sites the Commerce Clause, Article I, Section 8, Clause 3 (commerce) of the Constitution to enact H.R 2401.

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