



## Legislative Bulletin.....September 22, 2011

### Contents:

Amendments to H.R. 2401—TRAIN Act

**Order of Business:** The bill is scheduled to be considered on Thursday, September 22, 2011, and Friday, September 23, 2011 under a structured rule. The rule ([H.Res.406](#)) provides for two hours of general debate equally divided and controlled by the majority and minority, waives all points of order against consideration of the bill, provides for consideration of 12 amendments with 10 minutes for debate each, and provides for one motion to recommit with or without instructions.

**RSC Staff Contact:** Bruce Miller, [bruce.miller@mail.house.gov](mailto:bruce.miller@mail.house.gov), (202) 226-9720.

---

### AMENDMENTS MADE IN ORDER UNDER THE RULE

1. **Rush (D-IL).** The amendment would increase the total number of members of the Commission from the current total of 11 to 16. The amendment would add the Chair of the Council on Environmental Quality, Secretary of Interior, Secretary of Health and Human Services, Director of the Centers for Disease Control and Prevention, and Director of the National Institute of Health Environmental Health Science. The amendment also designates the Secretary of Commerce and Chair of the Council on Environmental Quality as co-chairs of the Committee.

Additionally, the amendment adds additional requirements to cumulative analysis developed by the committee to also include evaluations on how the EPA regulations affect a number of health related issues, “clean energy” jobs, the environment, and the number of missed school and work days. Finally, the amendment also adds to the discussion portion of the report to also include how the EPA regulations affect “vulnerable subpopulations, including the elderly, pregnant women, and populations with pulmonary disease; the environment, including impacts on global climate change, and the development of infants and children.”

2. **McNerney (C-CA).** The amendment adds an additional requirement to cumulative analysis developed by the committee to also include “the effect on clean energy jobs and clean energy companies, including companies that export clean energy technology.”
3. **Moore (D-WI).** The amendment adds additional requirements to cumulative analysis developed by the committee to also include evaluations on how the EPA regulations affect low income communities and public health.

4. **Capps (D-CA).** The amendment would add a fifth provision to the committees' analysis to include estimates of the impacts of delaying the covered rules and covered actions on the incidence of birth and developmental defects and infant mortality.
5. **Kinzinger (R-IL)/Gonzales (D-TX).** The amendment would include in the list of EPA regulations to be studied any rule addressing fuels under title II of the Clean Air Act as described in the Unified Agenda of Federal Regulatory and Deregulatory Actions under Regulatory Identification Number 2060-AQ86, or any substantially similar rule, including any rule under section 211(v) of the Clean Air Act.

According to the sponsor, this amendment would add "Tier 3" regulations that to the list of regulations that would be studied under study. The regulations would mandate certain fuel standards, specifically a 70% decrease in sulfur levels and vapor pressure, without justifying these changes with the requisite study. The Energy Independence and Security Act of 2007 directed the EPA to study and implement fuel changes to negate any detrimental air quality impacts resulting from the Renewable Fuels Standard. However, the EPA has not conducted the required EISA study.

6. **Dent (R-PA).** The amendment would include in the list of EPA regulations to be studied the National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants'', published at 75 Fed. Reg. 54970 (September 9, 2010).

**Additional Background:** Portland Cement Regulations: Portland cement is a type of cement, created by grinding base materials and heating them in kilns to a high temperature. Although the cement industry is already one of the most regulated industries in the country, the EPA has proposed seven [new rules](#) on kiln emissions which would severely impact the industry. These rules, which limit emissions to levels nearly unachievable using the best known technology, would force the industry to shut down 18 plants (11% of production) and cost [\\$3.4 billion](#) over 3 years (half the industry's annual revenues), directly destroying at least [4,000 jobs](#) and the ability of American cement producers to compete with their global competitors. The rules would also result in increased costs of [\\$1.2 to \\$2 billion](#) to state and local governments for road projects.

7. **Hastings (D-FL).** The amendment would not allow any EPA covered actions listed under section three of the bill to be included under the committee analysis if it was promulgated in compliance with Executive Order 12866, relating to regulatory planning and review, or the National Environmental Policy Act of 1969. The amendment also strikes section five of the bill, which specifically prohibits the EPA from issuing a final rule on the commonly referred to as maximum achievable control technology (MACT) standards and the cross-state air pollution rule (CSAPR) until at least six months after the final report is released.
8. **Connolley (D-VA).** The amendment adds a new provision to the committee report that would require an analysis of the EPA regulation "to identify pollution control policies that should be adopted and implemented by the United States to provide domestic job growth and ensure that the Nation is internationally competitive in the \$5 trillion global energy industry for clean energy technology development and manufacturing."
9. **Jackson-Lee (D-TX).** The amendment would extend the public comment period in the bill from 90 days to 120 days.

**10. Whitfield (R-KY).** The amendment would strike section five and replace it with new language that would affect the Cross-State Air Pollution Rule (“CSAPR”) and the Maximum Achievable Control Technology Standards for Utilities (“Utility MACT”) rule. The amendment would prohibit the CSAPR rule from having any affect and requires the EPA to apply the Clean Air Interstate Rule (CAIR) to regulate the cross state transport rules for sulfur dioxide emissions and power plant nitrogen oxide emissions. The amendment holds in place CAIR for at least 3 years after the TRAIN study is complete. Additionally, the bill requires the EPA to base any future rule on monitored data, allow full interstate trading, and allow states at least 3 years for development of implementation plans.

The amendment would prohibit the Maximum Achievable Control Technology Standards for Utilities (“Utility MACT”) from having any affect and any final rule issued prior to enactment of the TRAIN Act has no effect. Additionally, the EPA cannot enact any final rule on Utility MACT until at least one year after the TRAIN Act report is completed. Additionally, the amendment increases the compliance deadline for facilities to install equipment and comply with the new standards from three to at least five years. The amendment also requires the EPA Administrator to use a source-based approach for the new rule and is achievable in practice, and can be met under actual operating conditions for all of the pollutants. Finally, the amendment requires the Administrator to implement least burdensome regulatory alternatives, consistent with the purposes of the CAA and President Obama’s Executive Order 13563

**11. Latta (R-OH).** The amendment would add a new section to the bill that requires the Administrator of the EPA to take into consideration feasibility and cost in establishing any national primary or secondary ambient air quality standard under section 109 of the Clean Air Act. In 2001, the Supreme Court held in *Whitman v. American Trucking Assns., Inc.* that the CAA does not allow the Administrator to consider implementation costs when setting National Ambient Air Quality Standards (NAAQS). According to the sponsor, this amendment would amend Section 109 by adding a paragraph stating that the Administrator “shall” consider “costs and feasibility” when setting standards.

**12. Richardson (D-CA).** The amendment strikes the offset under the bill. The bill offsets the \$3.5 million authorization for the bill by reducing funding for the funding for the Diesel Reduction Act ([DERA](#)) of 2010 reauthorized late last year.

#####