

AMENDMENT TO H.R. 2401, AS REPORTED

OFFERED BY M .

Strike section 5 and insert the following:

1 **SEC. 5. ADDITIONAL PROVISIONS RELATING TO CERTAIN**
2 **RULES.**

3 (a) **CROSS-STATE AIR POLLUTION RULE/TRANSPORT**
4 **RULE.—**

5 (1) **EARLIER RULES.—**The rule entitled “Fed-
6 eral Implementation Plans: Interstate Transport of
7 Fine Particulate Matter and Ozone and Correction
8 of SIP Approvals”, published at 76 Fed. Reg. 48208
9 (August 8, 2011), and any successor or substantially
10 similar rule, shall be of no force or effect, and shall
11 be treated as though such rule had never taken ef-
12 fect.

13 (2) **CONTINUED APPLICABILITY OF CLEAN AIR**
14 **INTERSTATE RULE.—**In place of any rule described
15 in paragraph (1), the Administrator of the Environ-
16 mental Protection Agency (in this section referred to
17 as the “Administrator”) shall continue to implement
18 the Clean Air Interstate Rule.

19 (3) **ADDITIONAL RULEMAKINGS.—**

1 (A) ISSUANCE OF NEW RULES.—The Ad-
2 ministrator—

3 (i) shall not issue any proposed or
4 final rule under section 110(a)(2)(D)(i)(I)
5 or section 126 of the Clean Air Act (42
6 U.S.C. 7410(a)(2)(D)(i)(I), 7426) relating
7 to national ambient air quality standards
8 for ozone or particulate matter (including
9 any modification of the Clean Air Inter-
10 state Rule) before the date that is 3 years
11 after the date on which the Committee
12 submits the final report under section 4(e);
13 and

14 (ii) in issuing any rule described in
15 clause (i), shall, notwithstanding section
16 110(a)(2)(D)(i)(I), allow the trading of
17 emissions allowances among entities cov-
18 ered by the rule irrespective of the States
19 in which such entities are located.

20 (B) IMPLEMENTATION SCHEDULE.—In
21 promulgating any final rule described in sub-
22 paragraph (A)(i), the Administrator shall estab-
23 lish a date for State implementation of the
24 standards established by such final rule that is

1 not earlier than 3 years after the date of publi-
2 cation of such final rule.

3 (4) DEFINITION OF CLEAN AIR INTERSTATE
4 RULE.—For purposes of this section, the term
5 “Clean Air Interstate Rule” means the Clean Air
6 Interstate Rule and the rule establishing Federal
7 Implementation Plans for the Clean Air Interstate
8 Rule as promulgated and modified by the Adminis-
9 trator (70 Fed. Reg. 25162 (May 12, 2005), 71
10 Fed. Reg. 25288 (April 28, 2006), 72 Fed Reg.
11 55657 (Oct. 1, 2007), 72 Fed. Reg. 59190 (Oct. 19,
12 2007), 72 Fed. Reg. 62338 (Nov. 2, 2007), 74 Fed.
13 Reg. 56721 (Nov. 3, 2009)).

14 (b) STEAM GENERATING UNIT RULES.—

15 (1) EARLIER RULES.—The proposed rule enti-
16 tled “National Emission Standards for Hazardous
17 Air Pollutants From Coal- and Oil-Fired Electric
18 Utility Steam Generating Units and Standards of
19 Performance for Fossil-Fuel-Fired Electric Utility,
20 Industrial-Commercial- Institutional, and Small In-
21 dustrial-Commercial-Institutional Steam Generating
22 Units” published at 76 Fed. Reg. 24976 (May 3,
23 2011), and any final rule that is based on such pro-
24 posed rule and is issued prior to the date of the en-
25 actment of this Act, shall be of no force and effect,

1 and shall be treated as though such proposed or
2 final rule had never been issued. In conducting anal-
3 yses under section 3(a), the Committee shall analyze
4 the rule described in section 3(e)(1)(E) (including
5 any successor or substantially similar rule) as if the
6 preceding sentence did not apply to such rule.

7 (2) PROMULGATION OF FINAL RULES.—In
8 place of the rules described in paragraph (1), the
9 Administrator shall—

10 (A) issue regulations establishing national
11 emission standards for coal-and oil-fired electric
12 utility steam generating units under section 112
13 of the Clean Air Act (42 U.S.C. 7412) with re-
14 spect to each hazardous air pollutant for which
15 the Administrator finds such regulations are
16 appropriate and necessary pursuant to sub-
17 section (n)(1)(A) of such section;

18 (B) issue regulations establishing stand-
19 ards of performance for fossil-fuel-fired electric
20 utility, industrial-commercial-institutional, and
21 small industrial-commercial-institutional steam
22 generating units under section 111 of the Clean
23 Air Act (42 U.S.C. 111); and

24 (C) issue the final regulations required by
25 subparagraphs (A) and (B)—

1 (i) after issuing proposed regulations
2 under such subparagraphs;

3 (ii) after consideration of the final re-
4 port submitted under section 4(c); and

5 (iii) not earlier than the date that is
6 12 months after the date on which the
7 Committee submits such report to the Con-
8 gress, or such later date as may be deter-
9 mined by the Administrator.

10 (3) COMPLIANCE PROVISIONS.—

11 (A) ESTABLISHMENT OF COMPLIANCE
12 DATES.—In promulgating the regulations under
13 paragraph (2), the Administrator—

14 (i) shall establish a date for compli-
15 ance with the standards and requirements
16 under such regulations that is not earlier
17 than 5 years after the effective date of the
18 regulations; and

19 (ii) in establishing a date for such
20 compliance, shall take into consideration—

21 (I) the costs of achieving emis-
22 sions reductions;

23 (II) any non-air quality health
24 and environmental impact and energy

1 requirements of the standards and re-
2 quirements;

3 (III) the feasibility of imple-
4 menting the standards and require-
5 ments, including the time needed to—

6 (aa) obtain necessary permit
7 approvals; and

8 (bb) procure, install, and
9 test control equipment;

10 (IV) the availability of equip-
11 ment, suppliers, and labor, given the
12 requirements of the regulations and
13 other proposed or finalized regula-
14 tions; and

15 (V) potential net employment im-
16 pacts.

17 (B) NEW SOURCES.—With respect to the
18 regulations promulgated pursuant to paragraph
19 (2)—

20 (i) the date on which the Adminis-
21 trator proposes a regulation pursuant to
22 paragraph (2)(A) establishing an emission
23 standard under section 112 of the Clean
24 Air Act (42 U.S.C. 7412) shall be treated
25 as the date on which the Administrator

1 first proposes such a regulation for pur-
2 poses of applying the definition of a new
3 source under section 112(a)(4) of such Act
4 (42 U.S.C. 7412(a)(4));

5 (ii) the date on which the Adminis-
6 trator proposes a regulation pursuant to
7 paragraph (2)(B) establishing a standard
8 of performance under section 111 of the
9 Clean Air Act (42 U.S.C. 7411) shall be
10 treated as the date on which the Adminis-
11 trator proposes such a regulation for pur-
12 poses of applying the definition of a new
13 source under section 111(a)(2) of such Act
14 (42 U.S.C. 7411(a)(2));

15 (iii) for purposes of any emission
16 standard or limitation applicable to electric
17 utility steam generating units, the term
18 “new source” means a stationary source
19 for which a preconstruction permit or
20 other preconstruction approval required
21 under the Clean Air Act (42 U.S.C. 7401
22 et seq.) has been issued after the effective
23 date of such emissions standard or limita-
24 tion; and

1 (iv) for purposes of clause (iii), the
2 date of issuance of a preconstruction per-
3 mit or other preconstruction approval is
4 deemed to be the date on which such per-
5 mit or approval is issued to the applicant
6 irrespective of any administrative or judi-
7 cial review occurring after such date.

8 (C) RULE OF CONSTRUCTION.—Nothing in
9 this subsection shall be construed to restrict or
10 otherwise affect the provisions of paragraphs
11 (3)(B) and (4) of section 112(i) of the Clean
12 Air Act (42 U.S.C. 7412(i)).

13 (4) OTHER PROVISIONS.—

14 (A) ESTABLISHMENT OF STANDARDS
15 ACHIEVABLE IN PRACTICE.—The regulations
16 promulgated pursuant to paragraph (2)(A) of
17 this section shall apply section 112(d)(3) of the
18 Clean Air Act (42 U.S.C. 7412(d)(3)) in ac-
19 cordance with the following:

20 (i) NEW SOURCES.—With respect to
21 new sources:

22 (I) The Administrator shall iden-
23 tify the best controlled similar source
24 for each source category or sub-
25 category.

1 (II) The best controlled similar
2 source for a category or subcategory
3 shall be the single source that is de-
4 termined by the Administrator to be
5 the best controlled, in the aggregate,
6 for all of the hazardous air pollutants
7 for which the Administrator intends
8 to issue standards for such source cat-
9 egory or subcategory, under actual op-
10 erating conditions, taking into account
11 the variability in actual source per-
12 formance, source design, fuels, con-
13 trols, ability to measure pollutant
14 emissions, and operating conditions.

15 (ii) EXISTING SOURCES.—With re-
16 spect to existing sources:

17 (I) The Administrator shall iden-
18 tify one group of sources that con-
19 stitutes the best performing 12 per-
20 cent of existing sources for each
21 source category or subcategory.

22 (II) The group constituting the
23 best performing 12 percent of existing
24 sources for a category or subcategory
25 shall be the single group that is deter-

1 mined by the Administrator to be the
2 best performing, in the aggregate, for
3 all of the hazardous air pollutants for
4 which the Administrator intends to
5 issue standards for such source cat-
6 egory or subcategory, under actual op-
7 erating conditions, taking into account
8 the variability in actual source per-
9 formance, source design, fuels, con-
10 trols, ability to measure pollutant
11 emissions, and operating conditions.

12 (B) REGULATORY ALTERNATIVES.—For
13 the regulations promulgated pursuant to para-
14 graph (2) of this section, from among the range
15 of regulatory alternatives authorized under the
16 Clean Air Act (42 U.S.C. 7401 et seq.), includ-
17 ing work practice standards under section
18 112(h) of such Act (42 U.S.C. 7412(h)), the
19 Administrator shall impose the least burden-
20 some, consistent with the purposes of such Act
21 and Executive Order 13563 published at 76
22 Fed. Reg. 3821 (January 21, 2011).

Strike subparagraph (A) of section 3(e)(1) and in-
sert the following:

1 (A) The Clean Air Interstate Rule (as de-
2 fined in section 5(a)(4)).

Strike subparagraph (B) of section 3(e)(1) and in-
sert the following:

3 (E) “National Ambient Air Quality Stand-
4 ards for Ozone”, published at 73 Fed. Reg.
5 16436 (March 27, 2008).

On page 13, line 17, in the matter before paragraph
(1) in section 6(a), strike “for fiscal year 2012”.

On page 13, line 18, in section 6(a)(1), insert “for
fiscal year 2012,” before “\$3,000,000”.

Strike paragraph (2) in section 6(a) and insert the
following:

6 (2) to the Environmental Protection Agency—
7 (A) for fiscal year 2012, \$1,000,000; and
8 (B) for fiscal year 2013, \$500,000.

Strike subsection (b) in section 6 and insert the fol-
lowing:

9 (b) OFFSET.—Effective October 1, 2011, section
10 797(a) of the Energy Policy Act of 2005, as amended by
11 section 2(e) of the Diesel Reduction Act of 2010 (Public
12 Law 111–364), is amended—

- 1 (1) by striking “2012” and inserting “2014”;
- 2 (2) by inserting “\$45,500,000 for fiscal year
- 3 2012, \$49,500,000 for fiscal year 2013, and” after
- 4 “to carry out this subtitle”.

