



THE COMMITTEE ON ENERGY AND COMMERCE

INTERNAL MEMORANDUM

September 9, 2011

TO: Members, Subcommittee on Energy and Power

FROM: Committee Staff

RE: Subcommittee Markup of H.R. 2250, the “EPA Regulatory Relief Act of 2011,” and H.R. 2681, the “Cement Sector Regulatory Relief Act of 2011”

On Tuesday, September 13, 2011, at 10:00 a.m., in 2123 Rayburn House Office Building the Subcommittee on Energy and Power will mark up H.R. 2250, the “EPA Regulatory Relief Act of 2011,” and H.R. 2681, the “Cement Sector Regulatory Relief Act of 2011.”

Members must submit any amendments they may have two hours before they are offered during the markup. Members may submit amendments by email to: peter.kielty@mail.house.gov. Any information with respect to an amendment’s parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

I. H.R. 2250, EPA REGULATORY RELIEF ACT

H.R. 2250 was introduced on June 21 by Representatives Griffith and Butterfield together with Representatives Olson, Barrow, McMorris Rodgers, Ross, Scalise and Matheson. On September 8, the Subcommittee on Energy and Power held a legislative hearing on H.R. 2250.

The legislation addresses four interrelated rules issued by the Environmental Protection Agency (EPA) affecting more than 200,000 boilers, process heaters, and incinerators in the United States. The rules set “maximum achievable control technology” (MACT) and other standards under Sections 112 and 129 of the Clean Air Act (CAA), and Sections 2002(a)(1) and 1004(27) of the Resource Conservation and Recovery Act (RCRA), to regulate emissions of hazardous air pollutants. The four rules include:

- (i) “National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters,” 76 FR 15608 (March 21, 2011) (*see* [EPA's Final Rule](#); [EPA's Fact Sheet](#)) (the “Major Sources Rule”);
- (ii) “National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial and Institutional Boilers,” 76 FR 15554 (March 21, 2011) (*see* [EPA's Final Rule](#); [EPA's Fact Sheet](#)) (the “Area Sources Rule”);

- (iii) “Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units,” 76 FR 15704 (March 21, 2011) (*see* [EPA's Final Rule](#); [EPA's Fact Sheet](#)) (the “CISWI Rule”); and,
- (iv) “Identification of Non-Hazardous Secondary Materials That Are Solid Waste,” 76 FR 15456 (March 21, 2011) (*see* [EPA's Final Rule](#); [EPA's Fact Sheet](#)) (the “NHSM Rule”).

H.R. 2250 would:

- Provide EPA with at least 15 months to re-propose and finalize new rules for boilers, process heaters, and incinerators;
- Extend compliance deadlines from 3 to at least 5 years to allow facilities adequate time to comply with the standards and install necessary equipment;
- Direct EPA, when developing the new rules, to adopt definitions that allow sources to use a wide range of alternative fuels; and,
- Direct EPA to ensure that the new rules are achievable by real-world boilers, process heaters, and incinerators and impose the least burdensome regulatory alternatives consistent with the purposes of the CAA and the President’s Executive Order 13563.

H.R. 2250 includes the following specific sections:

Section 1: Section 1 provides the short title of “EPA Regulatory Relief Act of 2011.”

Section 2: Sections 2(a) and 2(b) direct the Administrator of the EPA to promulgate new rules to replace four recently published, interrelated EPA rules setting MACT and other performance standards for industrial, commercial and institutional boilers and process heaters, and commercial and industrial solid waste incineration units. These rules were issued under Sections 112 and 129 of the Clean Air Act, and Sections 2002(a)(1) and 1004(27) of RCRA.

Section 2(a) directs the Administrator to finalize the new rules 15 months from the date of enactment of the Act, or such later date as may be determined by the Administrator.

Section 2(c) clarifies that the provisions of Section 112(j) and 112(g)(2), which direct the Administrator or State permitting authorities to establish on a case-by-case basis emission limits in certain circumstances where the Administrator has failed to promulgate a MACT standard, shall not apply prior to the effective date of the new standards.

Section 3: Section 3(a) extends the deadline for compliance with the new rules from 3 years to at least 5 years from the date of enactment of the Act to allow sufficient time for facilities to install equipment and comply with the new standards.

Section 3(b) clarifies that for each of the new rules promulgated pursuant to the Act, the date on which the Administrator proposes the rule shall be treated as the proposal date for purposes of the definition of a “new source” under Section 112(a)(4), and of a “new solid waste incineration unit” under Section 129(g)(2) of the CAA.

Section 3(c) clarifies that nothing in the legislation should be construed to restrict the Administrator or a State permitting authority from granting an extension under CAA Section 112(i)(3)(B) allowing an existing source up to 1 additional year to comply if necessary for the installation of controls, or to restrict the President from granting limited national security-related exemptions under CAA Section 112(i)(4).

Section 4: Section 4 provides that in defining the terms “commercial and industrial solid waste incineration unit,” “commercial and industrial waste,” and “contained gaseous material,” the Administrator should adopt the meaning of those terms set forth in an EPA 2000 rule. These definitions provide that units designed for energy recovery should be regulated under Section 112 of the CAA, and should not be classified as incinerators and regulated under CAA Section 129. This section is intended to ensure the continued use of a wide range of alternative fuels and encourage energy recovery.

Section 5: Section 5(a) clarifies that the emissions standards set by the Administrator in the new rules must be achievable in practice. The section directs the Administrator to ensure that the emissions standards can be met under actual operating conditions consistently and concurrently for all pollutants regulated by the new rules. This section is intended to ensure that the standards are based on emission limits achieved in practice by real-world boilers, process heaters and incinerators.

Section 5(b) clarifies that in promulgating the new rules, the Administrator should impose the least burdensome regulatory alternatives, consistent with the purposes of the CAA and Executive Order 13563 (published January 21, 2011).

II. H.R. 2681, CEMENT SECTOR REGULATORY RELIEF ACT

H.R. 2681 was introduced on July 28 by Representatives Sullivan and Ross together with Representatives Kinzinger, Latta, Walden, Barton, Carter, Dent, Boren and Altmire. On September 8, the Subcommittee on Energy and Power held a legislative hearing on H.R. 2681.

The legislation addresses a rule affecting approximately 100 cement plants in the United States. The rule sets hazardous air pollutant and new source performance standards under Sections 112 and 111 of the CAA for Portland cement manufacturing plants. The rule is entitled the “National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants,” 75 FR 54970 (September 9, 2010) ([EPA's Final Rule](#); [EPA's Fact Sheet](#)). H.R. 2681 also addresses the CISWI and NHSM Rules referenced above.

H.R. 2681 would:

- Provide EPA with at least 15 months to re-propose and finalize achievable rules for cement manufacturing facilities;
- Extend compliance deadlines from 3 to at least 5 years to allow facilities adequate time to comply with standards and install necessary equipment;
- Direct EPA, when developing the new rules, to adopt definitions that allow cement manufacturing plants to continue to use alternative fuels for energy recovery; and,
- Direct EPA to ensure that new rules are achievable by cement manufacturing facilities in the United States and impose the least burdensome regulatory alternatives consistent with the purposes of the CAA and the President’s Executive Order 13563.

H.R. 2681 includes the following specific sections:

Section 1: This section provides the short title of “Cement Sector Regulatory Relief Act of 2011.”

Section 2: Sections 2(a) and 2(b) direct the Administrator of the EPA to issue new rules to replace three published, interrelated EPA rules setting MACT and other performance standards for the Portland cement manufacturing industry and Portland cement plants. These rules were issued under Sections 112 and 129 of the CAA, and Sections 2002(a)(1) and 1004(27) of RCRA. Section 2(b) directs the Administrator to finalize the new rules 15 months from the date of enactment of the Act, or such later date as determined by the Administrator.

Section 3: Section 3(a) extends the deadline for compliance with the new rules from 3 years to not earlier than 5 years from the date of enactment of the Act to allow sufficient time for facilities to install controls.

Section 3(b) clarifies that for each of the new rules promulgated pursuant to the Act, the date on which the Administrator proposes the rule shall be treated as the proposal date for purposes of the definition of a “new source” under Section 112(a)(4), and of a “new solid waste incineration unit” under Section 129(g)(2) of the CAA.

Section 3(c) clarifies that nothing in the legislation should be construed to restrict the Administrator or a State permitting authority from granting an extension under CAA Section 112(i)(3)(B) allowing an existing source up to 1 additional year to comply if necessary for the installation of controls, or to restrict the President from granting limited national security-related exemptions under CAA Section 112(i)(4).

Section 4: This section provides that in defining the terms “commercial and industrial solid waste incineration unit,” “commercial and industrial waste,” and “contained gaseous material,” the Administrator should adopt the meaning of those terms set forth in a 2000 rule promulgated by the Clinton Administration. These definitions provide that units designed for energy recovery should be regulated under Section 112 of the CAA, and should not be classified as incinerators and regulated under CAA Section 129. This section is intended to ensure the continued use of a wide range of alternative fuels and encourage energy recovery.

Section 5: Section 5(a) clarifies that the emissions standards set by the Administrator in the new rules should be achievable in practice. The section directs the Administrator to ensure that the emissions standards can be met under actual operating conditions consistently and concurrently for all pollutants regulated by the new rules. This section is intended to ensure that the standards are based on emissions limits achieved in practice by real-world cement manufacturing facilities.

Section 5(b) clarifies that in promulgating the new rules, the Administrator should impose the least burdensome regulatory alternatives, consistent with the purposes of the CAA and Executive Order 13563 (published January 21, 2011).

III. STAFF CONTACT

If you have any questions regarding the markup, please contact Mary Neumayr at 5-2927.