



# THE COMMITTEE ON ENERGY AND COMMERCE

## INTERNAL MEMORANDUM

September 16, 2011

To: Members, Committee on Energy and Commerce

From: Committee Staff

Re: Committee Markup of H.R. 2250, the “EPA Regulatory Relief Act of 2011,” H.R. 2681, the “Cement Sector Regulatory Relief Act of 2011,” and H.R. 2937, the “Pipeline Infrastructure and Community Protection Act of 2011”

Beginning on Tuesday (opening statements only), September 20, 2011, at 4:30 p.m. and continuing on Wednesday, September 21, 2011, at 10:00 a.m., in 2123 Rayburn House Office Building, the Committee on Energy and Commerce will mark up H.R. 2250, the “EPA Regulatory Relief Act of 2011;” H.R. 2681, the “Cement Sector Regulatory Relief Act of 2011;” and H.R. 2937, the “Pipeline Infrastructure and Community Protection 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](mailto: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, 2011, 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. On September 13, the Subcommittee on Energy and Power reported the bill and favorably recommended it to the full committee.

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 – Short Title**

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

### **Section 2 – Legislative Stay**

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 – Compliance Dates**

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 – Energy Recovery and Conservation**

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 – Other Provisions**

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, 2011, 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. On September 13, the Subcommittee on Energy and Power reported the bill favorably to the full committee.

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 – Short Title**

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

### **Section 2 – Legislative Stay**

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 – Compliance Dates**

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 – Energy Recovery and Conservation**

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 – Other Provisions**

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. H.R. 2937, PIPELINE INFRASTRUCTURE AND COMMUNITY PROTECTION ACT OF 2011**

On July 8, 2011, a discussion draft of H.R. \_\_\_\_, the “Pipeline Infrastructure and Community Protection Act of 2011,” was released. On July 15, the Subcommittee on Energy and Power held a legislative hearing on the discussion draft and that hearing was continued on July 21. On July 26, the Subcommittee on Energy and Power reported the bill and favorably recommended it to the full committee. On September 15, Chairman Upton and Chairman Emeritus Dingell introduced the discussion draft, as amended at subcommittee, as H.R. 2937.

H.R. 2937 includes the following specific sections.

#### **Section 1 – Short Title**

Section 1 provides the short title of “Pipeline Infrastructure and Community Protection Act of 2011.”

#### **Section 2 – Civil Penalties**

The “ability to pay” is eliminated from the Secretary of Transportation’s penalty considerations. Civil penalties for “major consequence violations” are increased from \$100,000 per violation to \$250,000 per violation, with the maximum for a series of violations to increase from \$1,000,000 to \$2,500,000. A “major consequence violation” is defined as an incident resulting in one or more deaths, one or more injuries requiring in-patient hospitalization, or environmental harm and property damage exceeding \$250,000.

#### **Section 3 – Pipeline Damage Prevention**

State-administered one-call notification (811 “call-before-you-dig”) programs must be certified by Pipeline and Hazardous Materials Safety Administration (PHMSA). Additionally, these programs must meet minimum standards to be eligible for federal grant funding. Section 3 revises these standards to expressly prohibit State programs from providing exemptions for mechanized excavation, municipalities, State agencies, or their contractors.

#### **Section 4 – Offshore Gathering Lines**

Certain gathering lines – pipelines that transfer oil or gas from a well to a processing facility – are unregulated by PHMSA. Section 4 enables PHMSA to issue regulations for offshore gathering lines. The regulations will exclude production and flow lines.

#### **Section 5 – Automatic and Remote-Controlled Shut-Off Valves**

This section requires PHMSA to issue regulations requiring the use of remote or automatic shut-off valves in newly-constructed transmission lines where “economically, technically, and operationally feasible.” Additionally, PHMSA is required to complete an evaluation of pipeline operators’ ability to respond to a release in existing lines as well as the feasibility of retrofitting lines with automatic and remote-controlled shut-off valves.

#### **Section 6 – Excess Flow Valves**

This section requires PHMSA to issue regulations requiring the use of excess flow valves in newly-constructed gas distribution branch services, multi-family facilities, and small commercial

facilities where “economically, technically, and operationally feasible.” This section expands current law which only requires excess flow valves for new single-family residences (after June 2008).

### **Section 7 – Integrity Management**

This section instructs the Secretary of Transportation to issue rules which expand integrity management requirements and remove redundant class location requirements on pipeline segments which employ integrity management requirements. PHMSA is also instructed to report to Congress the results of the evaluation leading to the required rulemaking.

### **Section 8 – Public Education and Awareness**

This section requires PHMSA to make public all inspections and their results on a monthly basis. PHMSA must also produce a publicly-available map of all high consequence areas as well as a summary of pipeline operators’ emergency response plans. Information on these inspections and maps will exclude proprietary and security-sensitive information.

### **Section 9 – Cast Iron Pipelines**

This section directs PHMSA to continue with operator surveys on cast iron pipeline replacement mandated in Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006. Additionally, this survey will continue to be updated every two years.

### **Section 10 – Leak Detection**

This section requires PHMSA to study the technical limits of current leak detection systems and what can be done to develop improved technologies. Subsequently, PHMSA shall issue regulations requiring liquid pipeline operators to use leak detection technologies, particularly in high consequence areas.

### **Section 11 – Incident Notification**

This section requires PHMSA to evaluate and revise incident notification procedures between the National Response Center (NRC) and State and local emergency response officials. Additionally, PHMSA is directed to issue regulations requiring operators to notify the NRC of an incident within one hour of confirmed discovery of an incident. Upon notification, the operator must characterize the release as small, medium, large, or very large. The operator also has the ability to revise their release estimate at a later point to a more precise, numerical figure. As part of the rulemaking, PHMSA must include a definition of what constitutes the point of discovery and what estimated volumes could be characterized as small, medium, large, and very large.

### **Section 12 – Transportation-Related Onshore Facility Response Plan Compliance**

This section expands PHMSA’s jurisdiction to the monitoring and enforcement of oil spill response plans as required under the Federal Water Pollution Control Act. Currently the Environmental Protection Agency (EPA) and the Department of Homeland Security (DHS) share authority in this task.

### **Section 13 – Pipeline Infrastructure Data Collection**

This section allows PHMSA to collect additional geospatial and technical data required for the maintenance of the National Pipeline Mapping System.

**Section 14 – International Cooperation and Consultation**

This section allows PHMSA to engage in informational exchange and consultation activities among international organizations and regulatory bodies.

**Section 15 – Transportation-Related Oil Flow Lines**

This section allows PHMSA to collect data on transportation-related oil flow lines, but prohibits PHMSA from prescribing standards on such lines.

**Section 16 – Alaska Project Coordination**

This section authorizes PHMSA to provide technical assistance to the State of Alaska for the construction of the future Alaska Natural Gas Pipeline.

**Section 17 – Cost Recovery for Design Reviews**

This section allows PHMSA to recover design review costs through new user fee authorities for new pipeline projects with costs exceeding \$1 billion or that use “new or novel technologies or design.” Operators are directed to provide PHMSA with relevant design plans and data at least 120 days prior to groundbreaking, and PHMSA is directed to provide feedback within 90 days of receiving the plans. PHMSA is also directed to issue guidance on the definition of “new or novel technologies or design.” Design review funding can only be made available through appropriations acts.

**Section 18 – Special Permits**

Special permits are waivers of certain safety, maintenance, and inspection standards for pipeline operators. This section allows PHMSA to consider an operator’s compliance and accident history as well as “any additional factors considered relevant” when considering granting or extending a waiver. The additional factors will be determined through rulemaking. The section also grants PHMSA the authority to modify, suspend, or revoke a special permit given an operator’s failure to comply with its conditions, changes in pipeline safety or federal law, or in an immediate effort to avoid significant risk to safety.

**Section 19 – Biofuel Pipelines**

This section clarifies that all biofuels transported by pipeline are subject to PHMSA regulations.

**Section 20 – Carbon Dioxide Pipelines**

This section specifies that the Secretary shall prescribe minimum safety standards for carbon dioxide pipelines transporting carbon dioxide in either a liquid or gaseous state.

**Section 21 – Study of the Transportation of Diluted Bitumen**

This section directs PHMSA to conduct a comprehensive review of liquid pipeline regulations and determine whether these regulations are sufficient to regulate pipelines that transport diluted bitumen. The results of the review shall be reported to Congress within 18 months.

**Section 22 – Study of Non-Petroleum Hazardous Liquids Transported By Pipeline**

This section authorizes a study on the extent to which pipelines are currently being used to transport non-petroleum hazardous liquids (e.g., chlorine) and if such pipelines present

significant safety risks. Currently anhydrous ammonia and liquid CO<sub>2</sub> pipelines are the only non-petroleum lines that are regulated by PHMSA.

### **Section 23 – Clarifications**

This section clarifies that PHMSA's authority to require operators to amend operating plans and procedures is not limited to intrastate pipeline facilities. It also clarifies that PHMSA's authority for purposes of enforcement is not limited to an entity that is both the owner and operator of a pipeline.

### **Section 24 – Additional Resources**

This section authorizes PHMSA to hire 39 additional employees between 2011 and 2014 to carry out pipeline safety programs.

### **Section 25 – Maintenance of Effort**

This section authorizes PHMSA to withhold funding if it is determined that an entity or "agency is not carrying out satisfactorily a safety program or not acting satisfactorily as an agent."

### **Section 26 – Administrative Enforcement Process**

This section directs PHMSA to prescribe regulations that require hearings on corrective action orders, accident reports, special permit reviews, and civil penalties. It also requires separation of personnel involved with advising the Secretary, investigation, and prosecution. This process largely mirrors what is required under the Administrative Procedure Act (sections 554 and 556).

### **Section 27 – Maximum Allowable Operating Pressure (MAOP)**

This section requires gas pipeline operators, within 18 months, to confirm the established MAOP of pipelines in high consequence areas constructed previous to 1970 MAOP regulations. Operators will have to submit data within 18 months for segments that cannot confirm MAOP and must report exceedences of MAOP within 5 working days. In determining what operators can do on an interim basis if MAOP cannot be confirmed, PHMSA "shall take into account consequences to public safety and the environment, impacts on pipeline system reliability and deliverability, and other factors, as appropriate."

### **Section 28 – Cover Over Buried Pipeline**

This section requires PHMSA to review current regulations of pipelines buried under waterways to determine if such regulations are sufficient to prevent a release of hazardous liquid.

### **Section 29 – Onshore Gathering Lines**

This section requires PHMSA to complete a review of all onshore gathering line exemptions and report to Congress if current laws and regulations are sufficient to ensure safety, if new regulation is technically and economically practicable, and how PHMSA would propose modifying or revoking current exemptions.

### **Section 30 – Authorization of Appropriations**

This section authorizes a gas and hazardous liquid program budget of \$111.1 million for FY2011, \$115.8 million for FY2012, \$119.9 million for FY2013, and \$122.81 million for FY2014. It authorizes \$2.0 million for State damage prevention programs for each fiscal year

and \$10.0 million for emergency response grants for each fiscal year. It authorizes \$1.0 million for State one-call notification programs for each fiscal year and increases maximum Community Pipeline Safety Information Grants from \$50,000 to \$100,000 with an overall authorization of \$1.0 million for each fiscal year and eliminates the ban on user fees collected for such purposes. It also authorizes \$3.0 million per year for FY2011-2014 for pipeline transportation research and development.

The Majority anticipates circulating amendments to H.R. 2937, together with a brief explanation of those amendments, prior to the markup.

#### **IV. STAFF CONTACT**

If you have any questions regarding H.R. 2250 or H.R. 2681, please contact Mary Neumayr at 5-2927. If you have any questions regarding H.R. 2937, please contact Garrett Golding at 5-2927.