

10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
WHITFIELD OF KENTUCKY OR HIS DESIGNEE, DEBATABLE FOR
10 MINUTES

**AMENDMENT TO H.R. 2401, AS REPORTED
OFFERED BY Mr. Whitfield**

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(c);
13 and

14 (ii) in issuing any rule described in
15 clause (i), shall base the rule on actual
16 monitored (and not modeled) data and
17 shall, notwithstanding section
18 110(a)(2)(D)(i)(I), allow the trading of
19 emissions allowances among entities cov-
20 ered by the rule irrespective of the States
21 in which such entities are located.

22 (B) IMPLEMENTATION SCHEDULE.—In
23 promulgating any final rule described in sub-
24 paragraph (A)(i), the Administrator shall estab-
25 lish a date for State implementation of the

1 standards established by such final rule that is
2 not earlier than 3 years after the date of publi-
3 cation of such final rule.

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

15 (b) STEAM GENERATING UNIT RULES.—

16 (1) EARLIER RULES.—The proposed rule enti-
17 tled “National Emission Standards for Hazardous
18 Air Pollutants From Coal- and Oil-Fired Electric
19 Utility Steam Generating Units and Standards of
20 Performance for Fossil-Fuel-Fired Electric Utility,
21 Industrial-Commercial- Institutional, and Small In-
22 dustrial-Commercial-Institutional Steam Generating
23 Units” published at 76 Fed. Reg. 24976 (May 3,
24 2011), and any final rule that is based on such pro-
25 posed rule and is issued prior to the date of the en-

1 actment of this Act, shall be of no force and effect,
2 and shall be treated as though such proposed or
3 final rule had never been issued. In conducting anal-
4 yses under section 3(a), the Committee shall analyze
5 the rule described in section 3(e)(1)(E) (including
6 any successor or substantially similar rule) as if the
7 preceding sentence did not apply to such rule.

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

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

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

1 (C) issue the final regulations required by
2 subparagraphs (A) and (B)—

3 (i) after issuing proposed regulations
4 under such subparagraphs;

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

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

12 (3) COMPLIANCE PROVISIONS.—

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

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

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

23 (I) the costs of achieving emis-
24 sions reductions;

1 (II) any non-air quality health
2 and environmental impact and energy
3 requirements of the standards and re-
4 quirements;

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

8 (aa) obtain necessary permit
9 approvals; and

10 (bb) procure, install, and
11 test control equipment;

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

17 (V) potential net employment im-
18 pacts.

19 (B) NEW SOURCES.—With respect to the
20 regulations promulgated pursuant to paragraph
21 (2)—

22 (i) the date on which the Adminis-
23 trator proposes a regulation pursuant to
24 paragraph (2)(A) establishing an emission
25 standard under section 112 of the Clean

1 Air Act (42 U.S.C. 7412) shall be treated
2 as the date on which the Administrator
3 first proposes such a regulation for pur-
4 poses of applying the definition of a new
5 source under section 112(a)(4) of such Act
6 (42 U.S.C. 7412(a)(4));

7 (ii) the date on which the Adminis-
8 trator proposes a regulation pursuant to
9 paragraph (2)(B) establishing a standard
10 of performance under section 111 of the
11 Clean Air Act (42 U.S.C. 7411) shall be
12 treated as the date on which the Adminis-
13 trator proposes such a regulation for pur-
14 poses of applying the definition of a new
15 source under section 111(a)(2) of such Act
16 (42 U.S.C. 7411(a)(2));

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

1 date of such emissions standard or limita-
2 tion; and

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

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

15 (4) OTHER PROVISIONS.—

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

22 (i) NEW SOURCES.—With respect to
23 new sources:

24 (I) The Administrator shall iden-
25 tify the best controlled similar source

1 for each source category or sub-
2 category.

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

17 (ii) EXISTING SOURCES.—With re-
18 spect to existing sources:

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

24 (II) The group constituting the
25 best performing 12 percent of existing

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

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

Strike subparagraph (A) of section 3(e)(1) and insert 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 insert 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 following:

9 (b) OFFSET.—Effective October 1, 2011, section
10 797(a) of the Energy Policy Act of 2005, as amended by

1 section 2(e) of the Diesel Reduction Act of 2010 (Public
2 Law 111-364), is amended—

3 (1) by striking “2012” and inserting “2014”;

4 (2) by inserting “\$45,500,000 for fiscal year
5 2012, \$49,500,000 for fiscal year 2013, and” after
6 “to carry out this subtitle”.

