

ENERGY CONSUMERS RELIEF ACT OF 2013

—————  
JULY 22, 2013.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
—————

Mr. UPTON, from the Committee on Energy and Commerce,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1582]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1582) to protect consumers by prohibiting the Administrator of the Environmental Protection Agency from promulgating as final certain energy-related rules that are estimated to cost more than \$1 billion and will cause significant adverse effects to the economy, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary .....	3
Background and Need for Legislation .....	3
Hearings .....	9
Committee Consideration .....	10
Committee Votes .....	10
Committee Oversight Findings .....	15
Statement of General Performance Goals and Objectives .....	15
New Budget Authority, Entitlement Authority, and Tax Expenditures .....	15
Earmark, Limited Tax Benefits, and Limited Tariff Benefits .....	15
Committee Cost Estimate .....	15
Congressional Budget Office Estimate .....	15
Federal Mandates Statement .....	16
Duplication of Federal Programs .....	16
Disclosure of Directed Rule Makings .....	17
Advisory Committee Statement .....	17

Applicability to Legislative Branch .....	17
Section-by-Section Analysis of the Legislation .....	17
Changes in Existing Law Made by the Bill, as Reported .....	18
Dissenting Views .....	19
Exchange of Letters .....	26

#### AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

##### SECTION 1. SHORT TITLE.

This Act may be cited as the “Energy Consumers Relief Act of 2013”.

##### SEC. 2. PROHIBITION AGAINST FINALIZING CERTAIN ENERGY-RELATED RULES THAT WILL CAUSE SIGNIFICANT ADVERSE EFFECTS TO THE ECONOMY.

Notwithstanding any other provision of law, the Administrator of the Environmental Protection Agency may not promulgate as final an energy-related rule that is estimated to cost more than \$1 billion if the Secretary of Energy determines under section 3(3) that the rule will cause significant adverse effects to the economy.

##### SEC. 3. REPORTS AND DETERMINATIONS PRIOR TO PROMULGATING AS FINAL CERTAIN ENERGY-RELATED RULES.

Before promulgating as final any energy-related rule that is estimated to cost more than \$1 billion:

(1) **REPORT TO CONGRESS.**—The Administrator of the Environmental Protection Agency shall submit to Congress a report (and transmit a copy to the Secretary of Energy) containing—

- (A) a copy of the rule;
- (B) a concise general statement relating to the rule;
- (C) an estimate of the total costs of the rule, including the direct costs and indirect costs of the rule;
- (D) an estimate of the total benefits of the rule, an estimate of when such benefits are expected to be realized, and a description of the modeling, the assumptions, and the limitations due to uncertainty, speculation, or lack of information associated with the estimates under this subparagraph;
- (E) an estimate of the increases in energy prices, including potential increases in gasoline or electricity prices for consumers, that may result from implementation or enforcement of the rule; and
- (F) a detailed description of the employment effects, including potential job losses and shifts in employment, that may result from implementation or enforcement of the rule.

(2) **INITIAL DETERMINATION ON INCREASES AND IMPACTS.**—The Secretary of Energy, in consultation with the Federal Energy Regulatory Commission and the Administrator of the Energy Information Administration, shall prepare an independent analysis to determine whether the rule will cause—

- (A) any increase in energy prices for consumers, including low-income households, small businesses, and manufacturers;
- (B) any impact on fuel diversity of the Nation’s electricity generation portfolio or on national, regional, or local electric reliability;
- (C) any adverse effect on energy supply, distribution, or use due to the economic or technical infeasibility of implementing the rule; or
- (D) any other adverse effect on energy supply, distribution, or use (including a shortfall in supply and increased use of foreign supplies).

(3) **SUBSEQUENT DETERMINATION ON ADVERSE EFFECTS TO THE ECONOMY.**—If the Secretary of Energy determines, under paragraph (2), that the rule will cause an increase, impact, or effect described in such paragraph, then the Secretary, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Commerce, the Secretary of Labor, and the Administrator of the Small Business Administration, shall—

- (A) determine whether the rule will cause significant adverse effects to the economy, taking into consideration—
  - (i) the costs and benefits of the rule and limitations in calculating such costs and benefits due to uncertainty, speculation, or lack of information; and
  - (ii) the positive and negative impacts of the rule on economic indicators, including those related to gross domestic product, unemployment, wages, consumer prices, and business and manufacturing activity; and
- (B) publish the results of such determination in the Federal Register.

**SEC. 4. DEFINITIONS.**

In this Act:

- (1) The terms “direct costs” and “indirect costs” have the meanings given such terms in chapter 8 of the Environmental Protection Agency’s “Guidelines for Preparing Economic Analyses” dated December 17, 2010.
- (2) The term “energy-related rule that is estimated to cost more than \$1 billion” means a rule of the Environmental Protection Agency that—
  - (A) regulates any aspect of the production, supply, distribution, or use of energy or provides for such regulation by States or other governmental entities; and
  - (B) is estimated by the Administrator of the Environmental Protection Agency or the Director of the Office of Management and Budget to impose direct costs and indirect costs, in the aggregate, of more than \$1,000,000,000.
- (3) The term “rule” has the meaning given to such term in section 551 of title 5, United States Code.

**PURPOSE AND SUMMARY**

H.R. 1582, the “Energy Consumers Relief Act of 2013,” was introduced by Rep. Bill Cassidy on April 16, 2013. The legislation will protect American consumers by increasing transparency and inter-agency review of new billion-dollar energy rules proposed by the Environmental Protection Agency (EPA) that have the potential to drive up energy costs and destroy jobs. The bill provides for greater checks and balances over EPA’s rulemaking activity by requiring, before the agency finalizes new energy-related rules estimated to cost more than \$1 billion, that the agency submit a report to Congress providing information detailing certain cost, benefit, energy price, and job impacts, and also that the Secretary of Energy, in consultation with other relevant agencies, conduct a review of the energy price, reliability, and other energy-related impacts, and make a determination about whether the rule will cause significant adverse effects to the economy.

**BACKGROUND AND NEED FOR LEGISLATION***Background*

Since 2009, EPA has proposed or finalized thousands of pages of new regulations imposing billions of dollars cumulatively in new compliance costs across the economy. These regulations include new rules that affect the production, supply, distribution, or use of energy and may impose annual compliance costs that continue over a period of years or even of decades.

EPA currently has more significant regulatory actions under review with the Office of Management and Budget (OMB) than any other Federal agency. OMB, moreover, has projected that nearly half the costs of new Federal regulations over the past decade come from EPA rules, stating that “the rules with the highest benefits and the highest costs, by far, come from the Environmental Protection Agency and in particular its Office of Air,” and estimated that EPA rules over that period accounted for “44 to 54 percent of the monetized costs” of regulations.

Since 2009, the EPA has finalized several energy-related rules, which, by the agency’s own estimates, have imposed costs of more than \$1 billion, including:

- Greenhouse Gas Standards for Light-Duty Vehicles (MY 2012–2016): \$52 billion;

- Greenhouse Gas Standards for Light-Duty Vehicles (MY 2017–2025): \$144 billion;
  - Greenhouse Gas Standards for Heavy-Duty Vehicles (MY 2014–2018): \$8.1 billion;
  - Ocean-Going Vessels Standards: \$1.85 billion annually in 2020, increasing to \$3.1 billion annually in 2030;
  - Utility MACT Rule: \$9.6 billion annually;
  - Boiler MACT Rule: \$1.4 billion to \$1.6 billion annually;
  - Cement MACT Rule: \$925 million to \$950 million annually;
  - Cross-State Air Pollution Rule/Clean Air Interstate Rule: \$2.4 billion; and,
  - Nationwide Sulfur Dioxide Standards: \$1.5 billion in 2020.
- Pending EPA energy-related rules proposed since 2009 that also may impose costs of more than \$1 billion include the following:
- Tier 3 Vehicle and Gasoline Standards: \$2 billion in 2017, increasing to \$3.4 billion in 2030;
  - Nationwide Ozone Standards: \$19 billion to \$90 billion annually;
  - 316(b) Rule: \$383 million to \$4.6 billion annually;
  - Coal Ash Rule: \$587 million to \$1.4 billion annually;
  - Greenhouse Gas “New Source Performance Standards” for Power Plants: To Be Determined; and,
  - Greenhouse Gas “New Source Performance Standards” for Refineries: To Be Determined.

#### *Need for Legislation*

H.R. 1582, which would ensure greater transparency and more rigorous interagency review of EPA billion-dollar energy rules, is needed to protect American consumers and jobs from costly regulations that may drive up energy prices and undermine the nation’s economic recovery. As OMB recently stated, “poorly designed regulations may have adverse effects on real people, by, for example, increasing prices, discouraging innovation, or decreasing employment.”

Collectively, EPA’s billion-dollar energy-related regulations have significant impacts on jobs and the economy. A study by the National Association of Manufacturers estimated that the collective cost of just six of EPA’s already finalized or anticipated billion-dollar regulations would be \$100 billion annually and put more than 2 million jobs at risk, and that a worst-case scenario could mean the loss of \$630 billion in output, 4.2 percent of GDP and 9 million jobs. A study by NERA Economic Consulting for the American Coalition for Clean Coal Electricity found that seven EPA regulations could lead to 69,000 megawatts of coal-fired power plant retirements by 2019, a total that represents approximately 20 percent of U.S. coal-fired generating capacity. Further, the study estimated that the costs to the electricity sector to comply with these rules could be over \$16 billion annually over the period 2013 through 2034, or a total cost of \$220 billion for just one sector of the U.S. economy.

At the legislative hearing on the discussion draft of H.R. 1582, the President of the Industrial Energy Consumers of America, Paul Cicio, testified about the potential impacts of EPA’s major regulations on consumers and jobs, “[w]hen the EPA is promulgating

rules and costs on the electric utility industry—we consumers pay for it. When the EPA promulgates rules on the oil and natural gas industry—consumers pay for it.” He testified that “[s]omeone has to pay for these regulations, and that someone is the industrial sector and other U.S. consumers.”

The Vice President of Advocacy for the American Fuel & Petrochemical Manufacturers, Brendan Williams, similarly testified that “[e]nergy cost increases carry significant implications for consumers and our economy. Consider the following facts: every penny increase in gasoline prices translates into a more than \$1 billion increase in household energy spending. And this is money that, as my colleague noted, consumers could spend elsewhere on other goods and services.” He also testified that the increased energy costs have “significant ripple effects throughout the economy,” and that “[t]he potential for such ripple effects is why we need to ensure regulation takes a balanced approach and maximizes environmental protection without disproportionately raising consumer costs or sending manufacturing jobs overseas.”

The Director of the Electricity Reliability Coordination Council, Scott Segal, also testified regarding the potential adverse effects of higher energy costs on consumers and the economy, stating:

[I]t should come as no surprise that higher electricity prices are destructive to our economy. Consider, residential consumers, small businesses, hospitals, schools, farms, industrial operations all depend on reliable and affordable electric power. Higher prices disproportionately impact vulnerable individuals, including the poor, the elderly, and those on fixed incomes. One-quarter of Americans report having problems paying for several basic necessities; 23 percent have difficulty in paying their utilities. That is who is damaged when we don't fully take into account the consumer impact of higher electricity costs.

EPA's major recent and pending rules affecting the power sector have the potential not only to raise energy prices for consumers, but also to adversely impact electric reliability. As of July 2013, 294 coal-fired electric generating units totaling 43,000 megawatts (MW) in 33 States have announced they were closing due, at least in part, to EPA policies. In November 2012, the North American Electric Reliability Corporation issued its 2012 Long-Term Reliability Assessment concluding that over 70,000 MW of fossil-fuel fired generating capacity, which is predominantly coal-fired power plants, will retire over the next 10 years, with 90 percent retiring in the next 5 years, aligning with the compliance deadlines of EPA's Utility MACT rule. This will mean the loss of 20% of the nation's coal-fired generation by 2017.

#### *What the Legislation Would Do*

Under H.R. 1582, EPA's billion-dollar energy-related rules would be subject to increased oversight and transparency regarding the costs, benefits and job impacts. H.R. 1582 would require EPA, in advance of finalizing such rules, to submit to Congress a report providing estimates of the total benefits of the rule, including an estimate of when such benefits are expected to be realized, and a

description of the modeling, the assumptions, and the limitations due to uncertainty, speculation, or lack of information; and the employment impacts.

Under H.R. 1582, EPA's billion-dollar energy-related rules would be subject to heightened interagency review by the Secretary of Energy, in consultation with other relevant agencies. As an initial matter, before such a rule could be promulgated as final by EPA, the Secretary of Energy, in consultation with the Federal Energy Regulatory Commission (FERC) and the Energy Information Administration (EIA), would determine whether the rule will cause: (a) any increase in energy prices for consumers, including low-income households, small businesses, and manufacturers; (b) any impact on fuel diversity of the Nation's electricity generation portfolio or on national, regional, or local electric reliability; (c) adverse effects on energy supply, distribution or use due to the economic or technical infeasibility of implementing the rule; or (d) any other adverse effect on energy supply, distribution, or use (including a shortfall in supply and increased use of foreign supplies).

The bill would further require that if the Secretary of Energy determines that the rule will cause such an increase, impact, or effect, then the Secretary, in consultation with the Administrator of the EPA, the Secretary of Commerce, the Secretary of Labor, and the Administrator of the Small Business Administration, would be required to determine whether such increase, impact, or effect will cause significant adverse effects to the economy, taking into consideration the costs and benefits of the rule and limitations in calculating such costs and benefits due to uncertainty, speculation, or lack of information, and the positive and negative impacts on economic indicators, including those related to gross domestic product, unemployment, wages, consumer prices, and business and manufacturing activity.

An independent review led by the Department of Energy (DOE) is appropriate because the department has primary responsibility for the coordination of national energy policy. The DOE Organization Act directs the department to assure "coordinated and effective administration of Federal energy policy and programs." Consultation with the EIA and FERC, and thereafter with the Secretaries of Labor and Commerce and the U.S. Small Business Administration (SBA) Administrator, in addition to EPA, is also appropriate and consistent with their statutory missions. In particular, EIA is the primary Federal government authority on energy statistics and analysis, and it is the nation's premier source of energy information. The FERC is an independent agency that regulates the interstate transmission of natural gas, oil, and electricity, and also regulates natural gas and hydropower projects. The Department of Labor's Bureau of Labor Statistics is an independent statistical agency and is the principal Federal agency responsible for measuring labor market activity, working conditions, and price changes in the economy. The Department of Commerce's Bureau of Economic Analysis is one of the world's leading statistical agencies, and provides estimates of gross domestic product and related measures. Finally, the SBA is an independent agency of the Federal government established to aid, counsel, assist, and protect the interests of small business concerns, including by assessing the impact of the regulatory burdens on small business.

The bill is prospective and affects only future EPA energy-related billion-dollar rules. The greater transparency and heightened inter-agency review of EPA's major energy rules will not prevent any of these rules from going forward except those that, in the determination of the President's Energy Secretary, after consulting with other relevant agencies, would cause significant adverse effects to the economy. Nothing in the bill will affect any existing or recently adopted EPA regulations.

*Uncertainties and Limitations in EPA's Cost and Benefit Analyses*

Greater transparency and interagency review of EPA's significant review is warranted not only because of the significant adverse impacts to jobs and the economy, but also because significant concerns have been raised regarding EPA's cost estimating practices, including its failure to assess fully the potential costs and potential job impacts.

Economist and Senior Vice President of NERA Economic Consulting, Dr. Anne Smith, testified that "[f]or major energy-related regulations, an analysis that accounts for secondary or ripple effects through the full economy is the only type that can be expected to provide a balanced understanding of overall economy impacts." However, EPA typically has not reported the full price effects and other costs that ripple through the wider economy in its regulatory impact analyses. EPA instead approaches cost estimation in a manner that restricts analysis to limited sectors, even though it has developed economy-wide modeling capability that could provide fuller information about the price and employment impacts of its rules. Additionally, Dr. Smith testified that for its major Clean Air Act regulations, since 2010 EPA has calculated employment impact estimates using a simplistic multiplier formula that is "guaranteed to estimate that each new regulation will result in an increase in jobs."

The Director of the Electric Reliability Coordinating Council, Scott Segal, similarly raised concerns that EPA does not fully consider all compliance costs. He stated that "when looking at cost[,] EPA *only* considers direct compliance costs, but dismisses risks associated with electric reliability and energy prices, and how that affects poor and minority families or U.S. business competitiveness. In effect, EPA is inflating the benefits of its rules while ignoring the costs."

Greater transparency and interagency review is also warranted due to the limitations and uncertainties associated with EPA's benefits estimates, including for the agency's major Clean Air Act rules, which are primarily attributable to reductions in fine particulate matter. As OMB recently stated in a Draft 2012 Report to Congress on the Benefits and Costs of Federal Regulations: "It is important to emphasize that the large estimated benefits of EPA rules are mostly attributable to the reduction in public exposure to a single air pollutant: fine particulate matter." Further, OMB stated:

More research remains to be done on several key questions, including analysis of the health benefits associated with reduction of [particulate matter], which as noted, drive a large percentage of aggregate benefits from air pollution controls. . . .

With respect to particulate matter, additional research would be exceedingly valuable to clarify and resolve relevant scientific issues and to make further progress on the relationship between particulate matter and health improvements.

Public health experts also have raised concerns regarding the limitations and uncertainties in EPA's benefits estimates based on reductions in particulate matter. For example, in a hearing before the Subcommittee on Energy and Power on June 28, 2012, relating to EPA's proposed particulate matter standards, Dr. Peter Valberg, former member of the Harvard School of Public Health, testified that "there are major questions about EPA's forecast of serious health effects caused by small increments in [particulate matter] levels at concentrations close to the [national ambient air quality standards]. EPA's statistical approach is fraught with numerous assumptions and uncertainties." Similarly, Dr. Tony Cox of the Colorado School of Public Health testified in a hearing before the Subcommittee on Energy and Power on June 19, 2012, relating to EPA regulations that "[t]he use of statistical associations to address causal questions about health effects of regulation is not only technically incorrect, but, as practiced by EPA and others, is also highly misleading to policy makers."

In addition to questions concerning EPA's claimed benefits associated with reductions in fine particulate matter near or below national ambient air quality levels, questions have also been raised regarding the use by EPA and other Federal agencies of "Social Cost of Carbon" (SCC) estimates to calculate large climate benefits for new rules. EPA describes the SCC as follows:

EPA and other federal agencies use the social cost of carbon (SCC) to estimate the climate benefits of rulemakings. The SCC is an estimate of the economic damages associated with a small increase in carbon dioxide emissions, conventionally one metric ton, in a given year. This dollar figure also represents the value of damages avoided for a small emission reduction (i.e. the benefit of a CO<sub>2</sub> reduction)." EPA states that "the models estimate damages occurring after the emission release and into the future, often as far out as the year 2300.

Recently, and without any public review or comment, the Administration increased its SCC estimates from approximately \$21/per ton in 2010 to approximately \$36/per ton in 2013, and disclosed the new projections in the context of a DOE rulemaking relating to microwave ovens (*see* 78 Fed. Reg. 36316, 36349 (June 17, 2013)). While the new increased estimates are likely to be used to justify expensive new EPA greenhouse gas rules relating to power plants, the new SCC estimates are highly speculative. DOE stated in its recent microwave oven rule:

A recent report from the National Research Council points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of greenhouse gases; (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment;

and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise serious questions of science, economics, and ethics and should be viewed as provisional. *Id.* at 36349.

H.R. 1582 will help ensure that before EPA finalizes major billion-dollar energy rules, the uncertainties and limitations in EPA's estimates of both costs and benefits will be subject to additional Congressional oversight and public review and greater consideration in the interagency review process for EPA's most expensive energy-related rules.

*Supporters of the Legislation*

Supporters of the legislation include:

- American Fuel & Petrochemical Manufacturers
- American Forest and Paper Association
- American Foundry Society
- American Fuel and Petrochemical Manufacturers
- Americans for Prosperity
- Association of Washington Business
- Automotive Recyclers Association
- California Manufacturers & Technology Association
- Colorado Association of Commerce & Industry
- Electric Reliability Coordinating Council
- Foundry Association of Michigan
- Indiana Cast Metals Association
- Industrial Energy Consumers of America
- Iowa Association of Business and Industry
- Metals Service Center Institute
- Mississippi Manufacturers Association
- National Association of Manufacturers
- National Mining Association
- National Oilseed Processors Association
- Non-Ferrous Founders' Society
- Ohio Cast Metals Association
- Pennsylvania Foundry Association
- Portland Cement Association
- State Chamber of Oklahoma
- Texas Cast Metals Association
- Textile Rental Services Association
- The Fertilizer Institute
- Window and Door Manufacturers Association
- Wisconsin Cast Metals Association
- Wisconsin Manufacturers and Commerce

HEARINGS

The Committee on Energy and Commerce held a hearing on the "Energy Consumers Relief Act of 2013" on April 12, 2013, and received testimony from:

- Paul N. Cicio, President, Industrial Energy Consumers of America;
- Brendan Williams, Vice President of Advocacy, American Fuel & Petrochemical Manufacturers;

- Scott H. Segal, Director, Electric Reliability Coordinating Council;
- Anne E. Smith, Ph.D., Senior Vice President, NERA Economic Consulting;
- William N. Rom, M.D., Professor of Medicine and Environmental Medicine, NYU School of Medicine on behalf of American Thoracic Society; and,
- Rena Steinzor, President, Center for Progressive Reform.

The EPA and U.S. Department of Energy were invited to testify but declined. EPA provided a written statement for the record.

#### COMMITTEE CONSIDERATION

On April 12, 2013, the Subcommittee on Energy and Power held a hearing on the discussion draft of the “Energy Consumers Relief Act of 2013.” On April 16, 2013, Representative Cassidy introduced the legislation as H.R. 1582.

On July 9, 2013 and July 10, 2013, the Subcommittee on Energy and Power met in open markup session, and reported the bill favorably, by a roll call vote of 17 ayes and 10 nays. During the markup, two amendments were offered, and one amendment was rejected and one amendment was adopted by a voice vote.

On July 16, 2013 and July 17, 2013, the Committee on Energy and Commerce met in open markup session. During the markup, four amendments were offered, of which one was adopted, by voice vote, and three amendments were rejected by roll call votes. A motion by Mr. Upton to order H.R. 1582, reported to the House, with amendment, was agreed to by a record vote of 25 ayes and 18 nays.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Upton to order H.R. 1582, reported to the House, with amendment, was agreed to by a record vote of 25 ayes and 18 nays. The following reflects the recorded votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS  
ROLL CALL VOTE # 25**

**BILL: H.R. 1582**, the "Energy Consumers Relief Act of 2013"

**AMENDMENT:** An amendment offered by Mr. Waxman, No. 2, to strike section 2, providing that, notwithstanding any other provision of law, the Administrator of the Environmental Protection Agency may not promulgate as final an energy related rule that is estimated to cost more than \$1 billion if the Secretary of Energy determines that, with respect to the rule, significant adverse effects to the economy will be cause..

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 19 yeas and 30 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton		X		Mr. Pallone	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Shimkus		X		Ms. Eshoo	X		
Mr. Pitts		X		Mr. Engel			
Mr. Walden		X		Mr. Green	X		
Mr. Terry		X		Ms. DeGette			
Mr. Rogers		X		Mrs. Capps	X		
Mr. Murphy		X		Mr. Doyle	X		
Mr. Burgess		X		Ms. Schakowsky	X		
Mrs. Blackburn		X		Mr. Matheson		X	
Mr. Gingrey				Mr. Butterfield	X		
Mr. Scalise		X		Mr. Barrow		X	
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Christensen	X		
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Cassidy		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Braley	X		
Mr. Olson		X		Mr. Welch	X		
Mr. McKinley		X		Mr. Lujan	X		
Mr. Gardner		X		Mr. Tonko	X		
Mr. Pompeo		X		Vacancy			
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers		X					

07/17/2013

**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS  
ROLL CALL VOTE # 26**

**BILL: H.R. 1582**, the "Energy Consumers Relief Act of 2013"

**AMENDMENT:** An amendment offered by Mr. Rush, No. 3, to provide that the Act shall not apply with respect to rules that will result in consumers saving money at the gasoline pump.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 21 yeas and 28 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton				Mr. Pallone	X		
Mr. Whitfield		X		Mr. Rush	X		
Mr. Shimkus		X		Ms. Eshoo	X		
Mr. Pitts		X		Mr. Engel			
Mr. Walden		X		Mr. Green	X		
Mr. Terry		X		Ms. DeGette			
Mr. Rogers		X		Mrs. Capps	X		
Mr. Murphy		X		Mr. Doyle	X		
Mr. Burgess		X		Ms. Schakowsky	X		
Mrs. Blackburn		X		Mr. Matheson	X		
Mr. Gingrey		X		Mr. Butterfield	X		
Mr. Scalise		X		Mr. Barrow	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Christensen	X		
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Cassidy		X		Mr. McNerney	X		
Mr. Guthrie		X		Mr. Braley	X		
Mr. Olson		X		Mr. Welch	X		
Mr. McKinley		X		Mr. Lujan	X		
Mr. Gardner		X		Mr. Tonko	X		
Mr. Pompeo		X		Vacancy			
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers		X					

07/17/2013

**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS  
ROLL CALL VOTE # 27**

**BILL: H.R. 1582**, the "Energy Consumers Relief Act of 2013"

**AMENDMENT:** An amendment offered by Mr. Tonko, No. 4, provides that the Act shall not apply with respect to rules that will result in reduced incidence of cancer, premature mortality, asthma attacks, or respiratory disease in children.

**DISPOSITION: NOT AGREED TO**, by a roll call vote of 19 yeas and 25 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton				Mr. Pallone	X		
Mr. Whitfield		X		Mr. Rush			
Mr. Shimkus		X		Ms. Eshoo	X		
Mr. Pitts		X		Mr. Engel			
Mr. Walden		X		Mr. Green	X		
Mr. Terry		X		Ms. DeGette			
Mr. Rogers		X		Mrs. Capps	X		
Mr. Murphy		X		Mr. Doyle			
Mr. Burgess				Ms. Schakowsky	X		
Mrs. Blackburn		X		Mr. Matheson	X		
Mr. Gingrey				Mr. Butterfield	X		
Mr. Scalise		X		Mr. Barrow	X		
Mr. Latta		X		Ms. Matsui	X		
Mrs. McMorris Rodgers				Ms. Christensen	X		
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Cassidy		X		Mr. McNeerney	X		
Mr. Guthrie		X		Mr. Braley	X		
Mr. Olson				Mr. Welch	X		
Mr. McKinley		X		Mr. Lujan	X		
Mr. Gardner		X		Mr. Tonko	X		
Mr. Pompeo		X		Vacancy			
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers		X					

07/17/2013

**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS  
ROLL CALL VOTE # 28**

**BILL: H.R. 1582**, the "Energy Consumers Relief Act of 2013"

**AMENDMENT:** A motion by Mr. Upton to order H.R. 1582 favorably reported to the House, as amended.  
(Final Passage)

**DISPOSITION: AGREED TO**, by a roll call vote of 25 yeas and 18 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Hall	X			Mr. Dingell		X	
Mr. Barton				Mr. Pallone		X	
Mr. Whitfield	X			Mr. Rush		X	
Mr. Shimkus	X			Ms. Eshoo		X	
Mr. Pitts	X			Mr. Engel			
Mr. Walden	X			Mr. Green		X	
Mr. Terry	X			Ms. DeGette			
Mr. Rogers				Mrs. Capps		X	
Mr. Murphy	X			Mr. Doyle			
Mr. Burgess				Ms. Schakowsky		X	
Mrs. Blackburn	X			Mr. Matheson	X		
Mr. Gingrey				Mr. Butterfield		X	
Mr. Scalise	X			Mr. Barrow	X		
Mr. Latta	X			Ms. Matsui		X	
Mrs. McMorris Rodgers				Ms. Christensen		X	
Mr. Harper	X			Ms. Castor		X	
Mr. Lance	X			Mr. Sarbanes		X	
Mr. Cassidy	X			Mr. McNerney		X	
Mr. Guthrie	X			Mr. Braley		X	
Mr. Olson				Mr. Welch		X	
Mr. McKinley	X			Mr. Lujan		X	
Mr. Gardner	X			Mr. Tonko		X	
Mr. Pompeo	X			Vacancy			
Mr. Kinzinger	X						
Mr. Griffith	X						
Mr. Bilirakis	X						
Mr. Johnson	X						
Mr. Long							
Mrs. Ellmers	X						

07/17/2013

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 1582 provides for greater transparency and interagency review of EPA energy-related rules estimated to cost \$1 billion or more.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1582, Energy Consumers Relief Act of 2013, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 1582, Energy Consumers Relief Act of 2013, contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 22, 2013.*

Hon. FRED UPTON,  
*Chairman, Committee on Energy and Commerce,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1582, the Energy Consumers Relief Act of 2013.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman and Megan Carroll.

Sincerely,

DOUGLAS W. ELMENDORF, *Director.*

Enclosure.

*H.R. 1582—Energy Consumers Relief Act of 2013*

H.R. 1582 would require that before the Environmental Protection Agency (EPA) finalizes any energy-related rule with an estimated regulatory cost of more than \$1 billion, including indirect costs, EPA must submit a report to the Congress detailing the rule's potential costs and other impacts on jobs and gasoline prices. The legislation also would require the Department of Energy (DOE), in consultation with other agencies, to prepare an independent analysis of those rules to determine if they would adversely affect the economy. EPA would be prohibited from finalizing any rule that DOE determines would have significant adverse effects to the economy.

CBO estimates that implementing H.R. 1582 would cost \$35 million over the 2014–2018 period, assuming appropriation of the necessary amounts. Enacting H.R. 1582 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO's estimate is based on information from EPA about the anticipated number of energy-related rules that would be subject to the requirements under this bill over the next five years. CBO estimates that implementing H.R. 1582 would not have a significant impact on spending by EPA because most of the analysis that it would need to complete under H.R. 1582 will already be conducted to meet similar reporting requirements under existing Executive Orders. CBO estimates, however, that DOE would need additional appropriations of about \$7 million annually to meet new and expanded reporting requirements under H.R. 1582. Those costs would cover staff and support costs for about five studies per year that would be similar in scope to recent DOE analyses of proposed energy legislation. That estimate is based on information from the Energy Information Administration, the organization within DOE that would be responsible for completing the analyses and reports.

H.R. 1582 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contacts for this estimate are Susanne S. Mehlman and Megan Carroll. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

## FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

## DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 1582 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 1582 does not direct to be completed any rule making within the meaning of 5 U.S.C. 551.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

H.R. 1582, the “Energy Consumers Relief Act of 2013” would provide for greater transparency and interagency coordination by prohibiting EPA from finalizing certain energy-related rules if the Secretary of Energy determines the rule would cause significant adverse effects to the economy. Specific provisions include the following:

*Section 1:* This section provides the short title of “Energy Consumers Relief Act of 2013.”

*Section 2:* This section prohibits the EPA Administrator from finalizing any energy-related rule estimated to cost more than \$1 billion if the Secretary of Energy determines that the rule will cause significant adverse effects to the economy.

*Section 3:* This section provides for certain reports and determinations prior to the finalizing of EPA energy-related rules estimated to cost more than \$1 billion. Section 3(1) of the Act directs that before such a rule may be promulgated as final, the EPA Administrator shall submit a report to Congress (and transmit a copy to the Secretary of Energy) that includes: (1) a copy of the rule; (2) a concise general statement relating to the rule; (3) an estimate of the total costs of the rule, including direct and indirect costs; (4) an estimate of the total benefits of the rule, an estimate of when such benefits are expected to be realized, and a description of the modeling, the assumptions, and the limitations due to uncertainty, speculation, or lack of information associated with the estimates; and (5) a detailed description of the employment effects, including potential job losses and shifts in employment, that may result from implementation or enforcement of the rule.

Section 3(2) provides that before such a rule may be promulgated as final by EPA, the Secretary of Energy, in consultation with the Federal Energy Regulatory Commission and the Energy Information Administration, shall prepare an independent analysis to determine whether the rule will cause: (a) any increase in energy prices for consumers, including low-income households, small businesses, and manufacturers; (b) any impact on fuel diversity of the nation’s electricity generation portfolio or on national, regional, or local electric reliability; (c) any adverse effect on energy supply, distribution or use due to the economic or technical infeasibility of implementing the rule; or (d) any other adverse effect on energy sup-

ply, distribution, or use (including a shortfall in supply and increased use of foreign supplies).

Section 3(3) specifies that if the Secretary of Energy determines that the rule will cause an increase, impact, or effect described in section 3(2), then the Secretary, in consultation with the Administrator of the EPA, the Secretary of Commerce, the Secretary of Labor, and the Administrator of the Small Business Administration, shall: (a) determine whether such increase, impact, or effect will cause significant adverse effects to the economy, taking into consideration the costs and benefits of the rule and limitations in calculating such costs and benefits due to uncertainty, speculation, or lack of information, and the positive and negative impacts on economic indicators, including those related to gross domestic product, unemployment, wages, consumer prices, and business and manufacturing activity; and (b) publish the results of such determination in the Federal Register.

*Section 4:* This section contains the following definitions:

1. “Direct costs” and “indirect costs” have the meanings given such terms in chapter 8 of EPA’s “Guidelines for Preparing Economic Analyses” dated December 17, 2010.

2. “Energy-related rule that is estimated to cost more than \$1 billion” means a rule of the EPA that (a) regulates any aspect of the production, supply, distribution, or use of energy or provides for such regulation by States or other governmental entities; and (b) is estimated by the Administrator of EPA or the Director of the Office of Management and Budget to impose direct costs and indirect costs, in the aggregate, of more than \$1 billion.

3. “Rule” has the meaning given to such term in section 551 of title 5, U.S. Code.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

## DISSENTING VIEWS

### I. SUMMARY

Supporters of H.R. 1582 claim that this bill simply provides more transparency of major energy-related rules. In reality, the bill indefinitely delays or even blocks critical Environmental Protection Agency (EPA) rules to protect human health, the environment, and our climate. This bill gives the Energy Secretary unprecedented authority to veto EPA rules that the agency proposed under the authority of the Clean Air Act, Clean Water Act, Safe Drinking Water Act, and other cornerstone environmental statutes. It also creates a duplicative regulatory review process that is less transparent than the rigorous review process already used by EPA and other federal agencies.

### II. SECTION-BY-SECTION ANALYSIS OF H.R. 1582

#### A. SECTION 2

Section 2 of the bill prohibits the Environmental Protection Agency (EPA) from finalizing any “energy-related rule” that is estimated to cost more than \$1 billion if the Secretary of Energy determines that the rule will cause “significant adverse effects to the economy.”

The term “significant adverse effects to the economy” is not defined. In addition, the term “energy-related rule” is broadly defined to include any rule that “regulates any aspect of the production, supply, distribution, or use of energy or provides for such regulation by States or other governmental entities.” Any public health rule focused on air pollution likely would be an “energy-related rule” under this broad definition. This definition also could apply to rules issued under the authority of the Safe Drinking Water Act, Clean Water Act, Superfund, and Resource Conservation and Recovery Act pertaining to pollution and waste from energy-related activities such as electricity generation, coal mining, and oil and gas drilling.

The bill applies to energy-related rules with an estimated cost of more than \$1 billion but is silent on the time period associated with such costs. It is unclear whether the bill refers to annual costs of \$1 billion or cumulative costs of \$1 billion over some unspecified period of time. If it applies to rules with annual costs of more than \$1 billion, it would have affected about a dozen major rules promulgated during the last decade. If it applies to rules with cumulative costs of more than \$1 billion, it would have applied to a much larger number of rules over the last decade and could apply to a significant percentage of EPA rules going forward.

## B. SECTION 3

Section 3 prevents EPA from issuing a final energy-related rule that is estimated to cost more than \$1 billion until three actions are taken. The legislation does not establish deadlines for the completion of any of these actions.

First, EPA is required to submit a report to Congress that contains an estimate of the costs of the rule (both direct and indirect) and a description of potential negative effects of the rule, including increased energy prices or potential job losses. During the Subcommittee on Energy and Power markup of the bill, Rep. Joe Barton (R-TX) offered an amendment to provide that this report to Congress includes an estimate of the total benefits of the rule, as well as a description of the modeling, assumptions, and speculation associated with those benefits. The amendment passed by voice vote.

Second, the Secretary of Energy, in consultation with the Federal Energy Regulatory Commission and the Administrator of the Energy Information Administration, is required to prepare an “independent analysis” to determine whether the rule will cause any increase in energy prices, any impact on fuel diversity of the nation’s electricity generation portfolio or on national, regional, or local electric reliability, or any other adverse effect on energy supply, distribution, or use. It is unclear what would constitute an impact on fuel diversity. Mr. Barton’s subcommittee amendment did not expand the scope of this analysis to include any benefits of EPA rules on energy prices, reliability, or energy supply and use, such as increased electricity generation from renewable sources or improvements in energy efficiency that lower costs for consumers.

Third, if the Secretary of Energy determines that the rule will cause any such increase, impact, or effect, then the Secretary must determine whether such increase, impact, or effect will cause “significant adverse effects to the economy.” In making this determination, the Secretary of Energy is required to consider impacts on gross domestic product, unemployment, wages, consumer prices, and business and manufacturing activity.

During the Subcommittee on Energy and Power markup of the bill, Rep. Bobby Rush (D-IL) offered an amendment to ensure that the Secretary of Energy considers the benefits of the EPA rule when conducting the independent analysis and when making the determination about the rule’s impact on the economy. As part of the independent analysis, the Secretary would have to examine potential benefits such as prevention of premature deaths, asthma attacks, and other respiratory disease; a decline in lost school and work days and hospital visits due to pollution-induced health effects; a decrease in greenhouse gas emissions and toxic air pollutants; any increase in energy efficiency for consumers or deployment of renewable energy; and any increase in employment related to upgrading power plants and industrial facilities or installing pollution control equipment. The Secretary of Energy also would be required to consider the rule’s positive impacts on economic indicators, in addition to any negative impacts, when making his determination about the overall impact of the rule on the economy. Rep. Rush’s amendment was defeated.

During the full Committee markup of the bill, Rep. Joe Barton (R–TX) offered another amendment that addressed some but not all of the concerns raised by Rep. Rush during the subcommittee markup. The amendment passed by voice vote. Rep. Barton’s amendment requires the Secretary of Energy to look at the costs and benefits of the EPA rule—as well as the uncertainty inherent in those estimates—when determining the rule’s macroeconomic impact. Rep. Barton’s amendment does not require the Secretary of Energy to include an examination of the EPA rule’s benefits in the independent analysis, leaving it to focus exclusively on the rule’s potential adverse effects on energy costs, energy supply, and electric reliability. This will result in a skewed Department of Energy analysis that ignores important benefits of EPA rules.

### III. POTENTIAL IMPACT OF H.R. 1582

The bill will broadly undermine important public health and environmental protections by indefinitely delaying or blocking critical EPA rules and establishing a costly and duplicative regulatory review process.

#### A. THE BILL GIVES THE SECRETARY OF ENERGY UNPRECEDENTED AUTHORITY TO VETO EPA RULES

The bill provides the Secretary of Energy with unprecedented authority to effectively veto EPA public health rules. If the Secretary of Energy determines that a rule would cause any “significant adverse effects to the economy,” EPA would be blocked from finalizing the rule. Because “significant” is not defined, the Secretary of Energy’s authority is unbounded and the determination will be subjective. This bill gives the Secretary of Energy’s opinion more weight than the requirements of the Clean Air Act, Clean Water Act, Safe Drinking Water Act, and other cornerstone environmental statutes.

Moreover, the bill requires the Secretary of Energy to base this determination on two fundamentally flawed analyses. The Secretary first must complete an “independent analysis” that looks only at any negative impacts of the EPA rule without considering the benefits. Using this skewed analysis as a guide, the Secretary must then determine whether or not the rule will cause a significant adverse effect on the economy—a macroeconomic analysis far afield from the Department of Energy’s area of expertise.

During the full Committee markup of H.R. 1582, Ranking Member Henry Waxman (D–CA) offered an amendment to strike this section of the bill, eliminating the Department of Energy’s authority to veto EPA rules. During debate on the amendment, Rep. Joe Barton (R–TX) acknowledged that this is the heart of the bill, stating that if his colleagues “accept the Waxman amendment, there’s no reason for the bill.”<sup>1</sup> Ranking Member Waxman’s amendment was defeated, with all Republican members of the Committee who were present voting against it.

<sup>1</sup>Committee on Energy and Commerce, Statement of the Honorable Joe Barton, Chairman Emeritus, *Markup of H.R. 698, H.R. 1900, H.R. 2094, H.R. 2052, H.R. 83, and H.R. 1582*, 113th Cong. (Jul. 17, 2013).

B. THE BILL COULD INDEFINITELY DELAY OR BLOCK CRITICAL EPA  
RULES

The bill bars EPA from issuing a final rule before EPA submits its report to Congress and the Department of Energy completes its independent analysis and, if applicable, makes its determination as to whether the rule would cause significant adverse effects to the economy. The bill, however, establishes no deadline for EPA to submit the report or the Department of Energy to complete the study or to make the determination. This appears to eliminate any statutory or judicial deadlines for rules covered by the bill, allowing for indefinite delay of these rules. Even if the Secretary ultimately determines that the EPA rule will not cause significant adverse effects to the economy, thereby allowing the EPA rule to proceed, the EPA rule could have been delayed by months or years. The Department of Energy's lack of expertise in macroeconomic analysis, the required consultations with six other agencies, and the absence of additional funding to complete the newly required analysis could lengthen the time it takes to complete the analysis and therefore lengthen the delay of important public health rules.

This indefinite delay—and potential veto—would have real-life, tangible impacts on human health and the environment in the United States. In his opening statement for the full Committee markup of the bill, Subcommittee Chairman Whitfield (R-KY) explained that the Mercury and Air Toxics Standards (MATS) rule was a good example of the type of rule this legislation was developed to address.<sup>2</sup> If this bill had been law in 2011, EPA could have been delayed or blocked from finalizing the MATS rule, which set emissions limits for new coal- and oil-fired power plants for mercury and other toxic air pollutants. EPA estimates that these new standards will save up to 11,000 lives, prevent 130,000 asthma attacks, and avert 540,000 missed work or sick days, each year. In addition, it will reduce children's exposure to mercury, which is a powerful neurological toxin that can cause developmental delays and loss of IQ.<sup>3</sup>

This bill would certainly apply to EPA's recently proposed Tier 3 vehicle emissions and fuel standards program. More than 150 million Americans still breathe unhealthy levels of air pollution. Motor vehicles are a significant source of this pollution, especially in urban areas. EPA has proposed to lower the permissible sulfur content of gasoline, which would allow vehicles to operate more efficiently and pollute less. EPA estimates that this rule will prevent 22,000 asthma attacks, 2,400 premature deaths, and 1.8 million lost school days, work days, and restricted-activity days each year.<sup>4</sup> These are human health benefits that could be delayed or perhaps permanently lost if this bill becomes law.

During the full Committee markup of H.R. 1582, Rep. Paul Tonko (D-NY) offered an amendment providing that the bill would not apply to EPA rules that will reduce the incidence of cancer,

<sup>2</sup>Committee on Energy and Commerce, Statement of the Honorable Ed Whitfield, *Markup of H.R. 698, H.R. 1900, H.R. 2094, H.R. 2052, H.R. 83, and H.R. 1582, 113th Cong.* (Jul. 16, 2013).

<sup>3</sup>U.S. Environmental Protection Agency, *Fact Sheet: Benefits and Costs of Cleaning Up Toxic Air Pollution from Power Plants* (Dec. 21, 2011).

<sup>4</sup>U.S. Environmental Protection Agency, *Regulatory Announcement: EPA Proposes Tier 3 Motor Vehicle Emission and Fuel Standards* (Mar. 2013).

premature death, asthma attacks, or respiratory disease in children. Rep. Tonko's amendment was defeated, with all Republican members of the Committee who were present voting against it.

If this bill had been law in 2012, EPA and the National Highway Traffic Safety Administration (NHTSA) may have been delayed or blocked from finalizing rules to reduce greenhouse gas emissions and improve the fuel economy of passenger vehicles and light duty trucks for model years 2017 through 2025. Combined with the first phase of the program, which applied standards for model years 2012 through 2016, the joint EPA and NHTSA rule will result in model year 2025 vehicles emitting one-half of the greenhouse emissions of a model year 2010 vehicle.<sup>5</sup> Consumers that buy the more efficient vehicles also will save thousands of dollars at the gasoline pump over the lifetime of those vehicles.<sup>6</sup>

During the full Committee markup of H.R. 1582, Rep. Bobby Rush (D-IL) offered an amendment providing that the bill would not apply to EPA rules that will result in consumers saving at the gasoline pump. Rep. Rush's amendment was defeated, with all Republican members of the Committee who were present voting against it.

#### C. THE BILL CREATES A DUPLICATIVE BUREAUCRATIC PROCESS THAT IS LESS TRANSPARENT

During the full Committee markup of the bill, Chairman Fred Upton claimed that this legislation will "finally put some inter-agency checks and balances on the EPA, an agency whose transparency in recent years has been woefully inadequate."<sup>7</sup> Rep. Joe Barton (R-TX) stated, "EPA has almost unchecked authority under current law to propose and implement these rules with no real requirement that they conduct any kind of a cost benefit analysis."<sup>8</sup> These statements overlook the exhaustive, transparent process EPA must undertake for every major rule it proposes. In fact, the bill would make the regulatory process less transparent.

Under current law and practice, EPA must meet numerous statutory and administrative requirements for economic impact analysis and public review of proposed rules before they are finalized.

Executive Order 12866 states, as one of the principles of regulation, that agencies "shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs."<sup>9</sup> Executive Order 12866 also grants the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget the authority to review any new rule deemed "significant," defined in part as a rule that may have

<sup>5</sup> U.S. Environmental Protection Agency, *Fact Sheet: EPA and NHTSA Set Standards to Reduce Greenhouse Gases and Improve Fuel Economy for Model Years 2017-2025 Cars and Light Trucks* (Aug. 2012).

<sup>6</sup> *Id.*

<sup>7</sup> Committee on Energy and Commerce, Statement of the Honorable Fred Upton, Chairman, *Markup of H.R. 698, H.R. 1900, H.R. 2094, H.R. 2052, H.R. 83, and H.R. 1582*, 113th Cong. (Jul. 16, 2013).

<sup>8</sup> Committee on Energy and Commerce, Statement of the Honorable Joe Barton, Chairman Emeritus, *Markup of H.R. 698, H.R. 1900, H.R. 2094, H.R. 2052, H.R. 83, and H.R. 1582*, 113th Cong. (Jul. 17, 2013).

<sup>9</sup> Exec. Order No. 12866, at section 1(b)(6), 76 Fed. Reg. 3821 (Jan. 21, 2011).

“an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.”<sup>10</sup>

For these economically significant rules, EPA must provide OIRA with an assessment and, to the extent possible, a quantification of the benefits of the proposed rule, such as benefits to human health and the environment, and the costs of the proposed rule, such as costs of complying with the regulation and adverse effects on economic productivity, employment, and competitiveness. EPA also must assess the costs and benefits of potential alternatives to the proposed rule and explain why the proposal is the preferred alternative.<sup>11</sup> EPA compiles this information into a Regulatory Impact Analysis, which is issued for public comment as part of the proposed rule.

H.R. 1582 requires the Department of Energy to examine the potential impact of the EPA rule on energy supply, use, reliability, and prices. EPA noted that Executive Order 13211 already requires the agency to examine energy effects, including “impacts on energy prices and output, changes in electricity generation mix, impacts on reserve margins for reliability, and other energy-related metrics where relevant for regulations.”<sup>12</sup>

Other statutes that apply to EPA rulemakings include the Paperwork Reduction Act, requiring federal agencies to collect information from entities in the least burdensome way; the Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act, requiring federal agencies to assess and minimize the impact of a proposed rule on small businesses and other small entities; the Unfunded Mandates Reform Act, requiring federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector; numerous executive orders pertaining to the impacts of federal rules on particular populations; and other statutes.<sup>13</sup> According to the Government Accountability Office, these requirements are “clearly voluminous and require a wide range of procedural, consultative, and analytical action on the part of the agencies.”<sup>14</sup>

EPA also must submit its rules for broader public comment, giving key stakeholders and concerned citizens the opportunity to weigh in. EPA then has to respond to those comments when finalizing the rule.

In addition, OIRA manages an extensive interagency review process to allow other agencies to comment on EPA rules prior to their proposal and finalization. H.R. 1582 would require the Department of Energy, which already has the opportunity to review EPA rules as part of the interagency review process, to conduct another analysis of the EPA rule. The bill also requires the Depart-

<sup>10</sup>*Id.* at section 3(f)(1).

<sup>11</sup>*Id.* at section 6(a)(3)(C).

<sup>12</sup>Committee on Energy and Commerce, Subcommittee on Energy and Power, U.S. Environmental Protection Agency, Statement for the Record, *Hearing on H.R. \_\_\_\_\_, the Energy Consumers Relief Act*, 113th Cong. (Apr. 12, 2013).

<sup>13</sup>Congressional Research Service, *The Federal Rulemaking Process: An Overview* (Feb. 22, 2011) (RL32240).

<sup>14</sup>Government Accountability Office, *Testimony of Victor Rezendes before the Committee on Education and the Workforce, U.S. House of Representatives, Federal Rulemaking: Procedural and Analytical Requirements at OSHA and Other Agencies* (Jun. 14, 2001) (GAO-01-852T).

ment of Energy to consult with other federal agencies when conducting this new analysis, even though these agencies already have the opportunity to review and comment on EPA rules as part of the interagency review process.

H.R. 1582 creates a parallel and cumbersome regulatory process that duplicates the transparent and rigorous process that already exists. EPA commented that the bill “would waste limited analytical resources on duplicative analysis that could needlessly delay important public health protections at an additional cost to taxpayers.”<sup>15</sup>

The bill actually makes the regulatory process less transparent, contrary to the stated intentions of the majority. H.R. 1582 requires the Secretary of Energy to complete an independent analysis of the EPA rule’s potential impact on energy supply, use, prices, and reliability, but the bill does not require the Secretary to disclose the methodology he uses to complete this analysis. The bill also does not require the Secretary to solicit public comment on the analysis and respond to those comments.

The Secretary then must use this analysis, which was not subject to public comment, to determine whether or not the rule would be blocked because it will have a significant adverse effect on the economy. This Secretary’s veto determination also is not subject to public comment.

For the reasons stated above, we dissent from the views contained in the Committee’s report.

HENRY A. WAXMAN,  
*Ranking Member.*

BOBBY L. RUSH,  
*Ranking Member, Subcommittee on Energy and Power.*

---

<sup>15</sup>Committee on Energy and Commerce, Subcommittee on Energy and Power, U.S. Environmental Protection Agency, Statement for the Record, *Hearing on H.R. \_\_\_\_\_, the Energy Consumers Relief Act*, 113th Cong. (Apr. 12, 2013).

FRED UPTON, MICHIGAN  
CHAIRMAN

EXCHANGE OF LETTERS

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641

July 18, 2013

The Honorable Bill Shuster  
Chairman  
Committee on Transportation and Infrastructure  
2165 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Shuster,

Thank you for your letter regarding H.R. 1582, the "Energy Consumers Relief Act of 2013." As you noted, there are provisions of H.R. 1582 that fall within the Rule X jurisdiction of the Committee on Transportation and Infrastructure, and I appreciate your willingness to forgo seeking a sequential referral on the bill.

I agree that your decision should not alter or diminish the jurisdiction of the Committee on Transportation and Infrastructure with respect to the appointment of conferees or to any future claim over the subject matters contained in the bill or similar legislation, and I will support the appointment of Members of the Committee to any conference committee on such provisions.

I will include a copy of your letter and this response in the report on H.R. 1582 and the *Congressional Record* during consideration of H.R. 1582 on the House floor.

Sincerely,



Fred Upton  
Chairman



Committee on Transportation and Infrastructure  
U.S. House of Representatives

Bill Shuster  
Chairman

Washington, DC 20515

Nick J. Rahall, II  
Ranking Member

Christopher P. Bertram, Staff Director

July 17, 2013

James H. Zola, Democrat Staff Director

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Dear Mr. Chairman:

I write concerning H.R. 1582, the *Energy Consumers Relief Act of 2013*, as ordered reported by the Committee on Energy and Commerce. There are certain provisions in the legislation that fall within the Rule X jurisdiction of the Committee on Transportation and Infrastructure.

In order to expedite this legislation for floor consideration, the Committee will not assert a jurisdictional claim over this bill by seeking a sequential referral. However, this is conditional on our mutual understanding and agreement that doing so does not in any way alter or diminish the jurisdiction of the Committee on Transportation and Infrastructure with respect to the appointment of conferees or to any future jurisdictional claim over the subject matters contained in the bill or similar legislation. I request you urge the Speaker to name members of the Committee to any conference committee named to consider such provisions.

Please place a copy of this letter and your response acknowledging our jurisdictional interest into the committee report on H.R. 1582 and into the *Congressional Record* during consideration of the measure on the House Floor.

Sincerely,

Bill Shuster  
Chairman

cc: The Honorable John Boehner  
The Honorable Nick J. Rahall, II  
The Honorable Henry A. Waxman  
Mr. Thomas J. Wickham, Jr., Parliamentarian

