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4 MARKUP ON

5 H.R. 1705, THE ``TRANSPARENCY IN REGULATORY ANALYSIS OF

6 IMPACTS ON THE NATION ACT OF 2011; AND

7 DISCUSSION DRAFT OF H.R. \_\_\_\_\_, THE JOBS AND ENERGY PERMITTING

8 ACT OF 2011

9 TUESDAY, MAY 24, 2011

10 House of Representatives,

11 Subcommittee on Energy and Power

12 Committee on Energy and Commerce

13 Washington, D.C.

14 The subcommittee met, pursuant to call, at 10:05 a.m.,

15 in Room 2123 of the Rayburn House Office Building, Hon. Ed

16 Whitfield [Chairman of the Subcommittee] presiding.

17 Members present: Representatives Whitfield, Sullivan,

18 Shimkus, Walden, Terry, Burgess, Bilbray, Scalise, McMorris

19 Rodgers, Olson, McKinley, Gardner, Pompeo, Griffith, Barton,  
20 Upton (ex officio), Rush, Inslee, Markey, Green, Capps,  
21 Gonzalez and Waxman (ex officio).

22       Staff present: Mike Bloomquist, Deputy General Counsel;  
23 Maryam Brown, Chief Counsel, Energy and Power; Allison  
24 Busbee, Legislative Clerk; Garrett Golding, Legislative  
25 Analyst, Energy; Cory Hicks, Policy Coordinator, Energy and  
26 Power; Peter Kielty, Senior Legislative Analyst; Heidi King,  
27 Chief Economist; Jeff Mortier, Professional Staff Member;  
28 Phil Barnett, Democratic Staff Director; Jen Berenholz,  
29 Democratic Chief Clerk; Alison Cassady, Democratic Senior  
30 Professional Staff Member; Greg Dotson, Democratic Energy and  
31 Environment Staff Director; Caitlin Haberman, Democratic  
32 Policy Analyst; Karen Lightfoot, Democratic Communications  
33 Director, and Senior Policy Advisor; Alexandra Teitz,  
34 Democratic Senior Counsel, Environment and Energy; and  
35 Lindsay Vidal, Democratic Press Secretary.

|  
36           Mr. {Whitfield.} I would like to call this markup to  
37 order.

38           I am pleased to be here today to advance two important  
39 pieces of legislation: the Transparency in Regulatory  
40 Analysis of Impacts on the Nation Act, which is referred to  
41 as the TRAIN Act, and the Jobs and Energy Permitting Act.

42           The TRAIN Act was introduced by Vice Chairman Sullivan  
43 and Representative Matheson, both members of this committee,  
44 which would require a cumulative impact study on over 14  
45 regulations being proposed by the Obama Administration that  
46 would have a major impact on our economy and jobs. EPA has  
47 begun one by one to look at some of the impacts of these  
48 regulations. We know that they have looked thoroughly at the  
49 benefits of these regulations. As an example, the Utility  
50 Rule proposed by EPA last month is estimated to add \$10.9  
51 billion a year to the cost of generating electricity. EPA  
52 predicts that this rule alone will increase electricity  
53 prices as much as 7 percent in some parts of the Nation.  
54 Many studies assess this rule at a much higher cost and  
55 impact on electricity prices.

56           Later this year, EPA expects to issue the Transport  
57 Rule, imposing a federally enforceable plan to further  
58 regulate electricity-generating facilities. EPA estimates

59 that this rule will cause electricity prices to increase by  
60 another 3 percent.

61 EPA also proposed to revise the new ozone standard that  
62 was just issued in 2008, and they are revisiting that  
63 already. EPA estimates that revising the Ozone Rule could  
64 cost \$90 billion, which undoubtedly would be passed along in  
65 electricity prices.

66 Earlier this year, EPA also issued new National Ambient  
67 Air Quality Standards for sulfur dioxide emitted from coal-  
68 burning power plants, and also for nitrogen oxide. Soon, EPA  
69 will be reviewing revisions to the standard for fine  
70 particulate matter. These rules also will be increasing  
71 energy prices.

72 The analysis by EPA did not look at the cumulative  
73 impact of the rules, nor did it look at how these rules will  
74 affect global competitiveness, jobs in all sectors of the  
75 economy, and prices that consumers pay for American-made  
76 products. The TRAIN Act would give us some methodology for  
77 looking at the cumulative economic impact of these types of  
78 regulations.

79 The second piece of legislation before us today is the  
80 Jobs and Energy Permitting Act of 2011, which was introduced  
81 by Representative Cory Gardner. This bill would give us  
82 access to vast quantities of new oil supplies in Alaska, and

83 help to bring that oil online in the years ahead. That it  
84 has taken one energy producer over 5 years to obtain a Clean  
85 Air permit for discovery exploration in the Outer Continental  
86 Shelf is unprecedented, even for EPA.

87       The estimates of available oil in the OCS are very  
88 promising. In fact, it could replace all of our imports from  
89 Saudi Arabia. But the federal red tape preventing that  
90 potential from being realized poses a daunting challenge for  
91 the American people. Some estimates suggest that oil  
92 production in the Beaufort and Chukchi Sea in Alaska could  
93 reach 1 million barrels per day should adequate  
94 infrastructure develop over time. According to the  
95 University of Alaska, it could offset foreign oil imports by  
96 7 percent, creating 40,000 to 50,000 jobs annually, and  
97 provide a vital source of additional throughput for the  
98 Trans-Alaska Pipeline System, one of our most significant oil  
99 arteries in North America.

100       So what we are doing today is very important as we try  
101 to take additional steps to become more energy independent,  
102 and I would urge all members to work with us to advance these  
103 two important pieces of legislation. And once again, I would  
104 like to thank Representatives Cory Gardner and John Sullivan  
105 for providing greater leadership on these two pieces of  
106 legislation.

107 [The prepared statement of Mr. Whitfield follows:]

108 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
109 Mr. {Whitfield.} I now yield to the ranking member, Mr.  
110 Rush, for his opening statement.

111 Mr. {Rush.} Thank you, Mr. Chairman, and I want to  
112 thank you for holding this hearing.

113 Today, we are marking up the so-called Jobs and Energy  
114 Permitting Act of 2011, which would amend section 328 of the  
115 Clean Air Act that addresses air pollution from Outer  
116 Continental Shelf drilling activities, and the TRAIN Act,  
117 which would establish an interagency panel to analyze certain  
118 aspects of EPA regulations.

119 The TRAIN Act would highlight the costs of implementing  
120 the EPA rules but does not take into account all the benefits  
121 of these regulations, including enhanced public health,  
122 increased job productivity or lives saved. This bill would  
123 also not take into account the positive impacts that EPA  
124 regulations have had on our economy, including spurring  
125 additional research and development of clean energy  
126 technologies, instituting higher fuel efficiency standards  
127 and helping make the country less dependent on foreign oil.

128 Unfortunately, for many of my colleagues, if the  
129 benefits of a regulation cannot be monetized, such as lives  
130 saved or job loss prevented, then they are written off as  
131 having no economic value. I would submit that for many local

132 communities, especially those less affluent ones which are so  
133 often disproportionately affected by dirty air and the  
134 consequences that come with it, the omission of health  
135 impacts in the analysis that the TRAIN Act calls for would be  
136 a great disservice to them.

137         Additionally, my concerns with the Jobs and Energy  
138 Permitting Act of 2011 have been expressed through each step  
139 of this legislative process. The minority and the majority  
140 staffs have met to try and come up with a bipartisan bill  
141 that many on this side of the aisle could support, but  
142 without success and to no avail.

143         As I have stated in both hearings on this bill, putting  
144 the environmental impacts aside momentarily, one of my  
145 biggest concerns is that this bill would attempt to reduce  
146 the input of local communities, those very communities who in  
147 many case are the ones most affected by the drilling in these  
148 areas, and as representatives of the people, I find it odd  
149 that we would vote to take away the American people's right  
150 to participate in the local permitting process under the  
151 charade that we are doing this in their best interest.

152         The amendments that I will offer today will attempt to  
153 address these problems so that we are not cutting out the  
154 people who are the most vulnerable and who have the most to  
155 lose when these permitting and regulatory decisions are made.



156           Mr. Chairman, I hope that my colleagues on your side of  
157 the aisle, the other side of the aisle, will be open to  
158 strengthening these bills so that they are not being jammed  
159 through the committee, and eventually the House Floor, only  
160 to ultimately die in the Senate for lack of bipartisan  
161 support. We have an opportunity, we have the time, let us s  
162 get it done in the right way, and this is the right time.  
163 Let us get it done in a bipartisan manner today.

164           I look forward to this markup, and with that I yield  
165 back the balance of my time.

166           [The prepared statement of Mr. Rush follows:]

167           \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
168 Mr. {Whitfield.} Thank you, Mr. Rush.

169 At this time I will recognize the chairman of the full  
170 committee, Mr. Upton of Michigan.

171 The {Chairman.} Well, thank you, Mr. Chairman.

172 This markup addresses two significant and bipartisan  
173 bills in our American Energy Initiative: the Jobs and Energy  
174 Permitting Act and the TRAIN Act.

175 Americans are facing major economic threats. Some  
176 factors are outside our control, but others are completely  
177 self-imposed. Two of these threats are the continued rise of  
178 gasoline prices and the Administration's regulatory assault  
179 on manufacturing and energy production. With these bills,  
180 this committee is answering the call of American households  
181 and businesses that are tired of watching the Federal  
182 Government get in the way of economic recovery.

183 The bipartisan Jobs and Energy Permitting Act, led by  
184 Mr. Gardner and Mr. Green, will provide the regulatory  
185 certainty for offshore oil exploration that is utterly  
186 lacking today. In the case of Shell Oil's effort to produce  
187 oil off the coast of Alaska, permits have yet to be approved  
188 after languishing for some 5 years at the EPA. Gasoline  
189 costs over a dollar per gallon more today than it did 1 year  
190 ago, yet the Administration continues to stand in the way of

191 domestic energy production.

192         This bill will end the never-ending circuit of permits,  
193 reviews, and appeals created by the EPA's current system for  
194 offshore drilling permit approval. Production off the coast  
195 of Alaska could make enormous strides to increase supply and  
196 bring down prices, decrease our foreign oil imports, refill  
197 the declining Trans-Alaska Pipeline, and create literally  
198 tens of thousands of jobs. Yet the EPA insists on holding up  
199 development of this resource that holds such great potential  
200 for our economy and national security. The Jobs and Energy  
201 Permitting Act will streamline the EPA's process and force it  
202 to make decisions on permits in a timely manner. This is  
203 commonsense legislation that should be approved by the panel  
204 and eventually the whole House.

205         The bipartisan TRAIN Act, introduced by our colleagues  
206 Mr. Sullivan and Mr. Matheson, ensures the Federal Government  
207 takes into account the cumulative impacts of proposed  
208 regulations for our economy. It seems obvious that the  
209 Federal Government would consider the consequences of its  
210 rules before imposing them, but anyone who has followed the  
211 actions of the EPA over the last 2 years has seen what  
212 happens when such a law is not on the books.

213         With the TRAIN Act, we are not shutting down operations  
214 at the EPA. We are not nullifying any of their regulations.

215 We are simply asking for a more holistic study of the  
216 economic impacts of EPA regs. Without thoughtful  
217 consideration and deliberate application, certain regulations  
218 have the ability to shut down businesses, destroy jobs, and  
219 increase the price and availability of energy.

220 I am very pleased these two bills before the  
221 subcommittee today carry bipartisan sponsors. I announced at  
222 the beginning of this Congress that bipartisan bills and  
223 amendments would be the first to be recognized in the  
224 committee, and each of the bills we have moved so far in this  
225 subcommittee fulfills that charge. I thank our colleagues  
226 for their hard work and commitment to helping ease regulatory  
227 burdens and bring down the cost of energy, and I yield back.

228 [The prepared statement of Mr. Upton follows:]

229 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
230 Mr. {Whitfield.} Thank you, Chairman Upton.

231 At this time I recognize the gentleman from California  
232 for purposes of an opening statement, Mr. Waxman.

233 Mr. {Waxman.} Thank you, Mr. Chairman.

234 Today, the Subcommittee considers two pieces of  
235 legislation: H.R. 1705, which requires additional studies of  
236 EPA regulations, and a discussion draft, which addresses oil  
237 and gas drilling on the Outer Continental Shelf. I have  
238 serious concerns about both bills.

239 H.R. 1705, known as the TRAIN Act, creates a new  
240 government panel charged with evaluating the cumulative  
241 impacts of EPA and related state and local regulations. I  
242 support the effort to have good information about the  
243 potential impacts of regulations but I can't support  
244 proposals that are one-sided, that will waste taxpayers'  
245 dollars with redundant or infeasible analyses, or that are  
246 designed to prevent EPA from doing its job of protecting  
247 public health and the environment.

248 One serious problem is that this bill calls for an  
249 analysis of only the costs of regulations, not their  
250 benefits. It asks for an analysis of the impacts of EPA  
251 regulations on the global economic competitiveness of the  
252 United States but not on the benefits of reducing global

253 climate change. It requires an assessment of the impacts of  
254 EPA's regulations on electricity and fuel prices, not on the  
255 health benefits of fewer cases of childhood asthma and longer  
256 lives. It calls for an analysis of the impact of facility  
257 closures but not of the facility openings that will be  
258 created by investment in clean energy. Unless we amend the  
259 bill to restore balance, it won't provide a fair and  
260 objective assessment of the rules to be examined.

261 Another problem is the cost to taxpayers. Under current  
262 law, proposed regulations are already subject to extensive  
263 analysis prior to being finalized. The legislation may be  
264 too ambitious given the time available and the inherent  
265 limitations of economic modeling to produce any meaningful  
266 additional value. In its current form, the bill asks a new  
267 government committee to analyze actions that may or may not  
268 be taken by federal, State and local regulators, including  
269 100 State and local permitting agencies over the next 20  
270 years. The committee is supposed to do this by next August,  
271 using state-of-the-art economic modeling, and without the  
272 authority to collect information. There is no question that  
273 this effort will cost taxpayers dearly, but there is a real  
274 question of whether it is even remotely feasible.

275 Today we are also marking up a bill to amend the Clean  
276 Air Act to expedite air permits for oil and gas operations on

277 the Outer Continental Shelf. I will also oppose this bill.  
278 It would do great damage to air quality in California and  
279 other coastal states.

280 I believe that the OCS air permitting process could be  
281 improved, so I reached out to the majority to see if they  
282 would work with me on the legislation. While we did have  
283 some staff discussions on the bill, Chairman Whitfield  
284 rejected my proposals and decided to pursue extreme changes  
285 to the law. The result is a bill that will produce more  
286 pollution, more litigation and less public participation.

287 Yesterday we had a hearing on a bill that oil companies  
288 are pushing to short-circuit the permit process for a tar  
289 sands pipeline through America's heartland. Today we are  
290 marking up a bill to allow oil companies to pollute more.  
291 And on Thursday we will mark up chemical security legislation  
292 that will fail to close critical security loopholes because  
293 the oil companies oppose such improvements. This agenda may  
294 be great for the oil companies, but it is the wrong agenda  
295 for this country. It puts the oil companies first and leaves  
296 the rest of us paying at the pump and in the quality of our  
297 environment.

298 We hear that we need to pass these bills to reduce gas  
299 prices, but that is nonsense. Even if Shell's permits were  
300 issued today, it would be well over a decade before the wells

301 would start producing. We heard testimony yesterday that the  
302 tar sands pipeline will actually raise gas prices, and  
303 leaving refineries vulnerable to terrorist attacks certainly  
304 won't lower gas prices.

305       America has real energy problems. But these bills are  
306 not the solution. Waiving environmental requirements and  
307 short-circuiting permitting reviews may boost oil company  
308 profits, but it won't lower prices or enhance our energy  
309 security.

310       Mr. Chairman, I thank you for this opportunity to give  
311 an opening statement, and I want to give back to you 21  
312 seconds.

313       [The prepared statement of Mr. Waxman follows:]

314 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*



|  
315           Mr. {Whitfield.} I really appreciate that. Thank you,  
316 sir.

317           This is a markup, and members do have an opportunity to  
318 make 2-minute opening statements, so at this time I recognize  
319 Mr. Sullivan for his opening statement.

320           Mr. {Sullivan.} Thank you, Chairman Whitfield, and  
321 thank you for holding this subcommittee markup today.

322           One important bill we are considering today is H.R.  
323 1705, the Transparency in Regulatory Analysis of Impacts on  
324 the Nation Act of 2011, which I introduced earlier this month  
325 with my good friend and colleague, Jim Matheson, to address  
326 the cumulative costs of 14 economically significant EPA  
327 regulations and actions. Many of the EPA's pending  
328 regulations and actions will cost our Nation billions,  
329 impacting everything from energy reliability, jobs,  
330 manufacturing and global economic competitiveness of the  
331 United States.

332           The TRAIN Act will conduct an in-depth economic analysis  
333 so Congress and the American people can fully understand how  
334 the EPA's regulatory train wreck will impact our economy. In  
335 fact, eight of the EPA's proposed regulations cost a minimum  
336 of \$1 billion on the U.S. economy. The time to address the  
337 full economic burden of these regulations is now.

338           Specifically, the TRAIN Act would require a federal  
339 interagency analysis of the cumulative impact of certain  
340 rules and actions of the Environmental Protection Agency on  
341 global economic competitiveness, energy and fuel prices, and  
342 the reliability of U.S. bulk power supply. It would also  
343 look at the impacts of these regulations on State and local  
344 government jobs.

345           Under this legislation, the interagency committee, not  
346 just EPA, will analyze the cumulative impact of 14  
347 economically significant rules and actions issued by the EPA.  
348 This analysis will help Congress and federal agencies develop  
349 a better understanding on how these regulatory policies are  
350 impacting America's economy as a whole. What will all this  
351 regulation cost? EPA doesn't know, and it has failed to  
352 conduct a study of overall cumulative cost of many of their  
353 regulations, which is why this legislation is so important.

354           We desperately need an honest accounting of EPA's  
355 regulations, which this bipartisan legislation will  
356 accomplish. I encourage my colleagues on both sides of the  
357 aisle to support this commonsense measure, and I yield back  
358 the balance of my time.

359           [The prepared statement of Mr. Sullivan follows:]

360 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
361           Mr. {Whitfield.} At this time I will recognize the  
362 gentleman from Massachusetts, Mr. Markey, for 2 minutes.

363           Mr. {Markey.} Thank you.

364           Today, we meet to mark up two bills. The first is  
365 called the TRAIN Act, and the second is a draft of a bill  
366 that gives oil companies a free pass to pollute the air.  
367 Both bills are based on the premise that it is simply not  
368 possible to keep our air and water clean and still keep our  
369 economic engine chugging along.

370           As we discuss these bills, I can't help but be reminded  
371 of the renowned children's story known as the Little Engine  
372 that Could, but in this version of the story, Republicans  
373 want to cast the EPA as the little engine that can't. I  
374 think I can, the EPA says as it tries to defend our Nation's  
375 rivers and lakes from becoming waste dumps. I think I can,  
376 the EPA says as it tries to remove cancer-causing materials  
377 from smokestacks and oilrigs. But EPA needs help so EPA asks  
378 for cleaner air. No, the Shell Oil Company says, can't you  
379 see I am too busy drilling to take out the particulate matter  
380 and hydrocarbons? EPA asks for help making water safe to  
381 drink. No, says the coal industry, can't you see I am too  
382 weary from chopping mountaintops to worry about my arsenic-  
383 laced sludge. EPA asked for help ridding the aid of cancer-

384 causing chemicals. No, says the chemical manufacturers, I  
385 have a busy day making plastics and pesticides and I don't  
386 have time to worry about that.

387 But EPA wouldn't give up, and the utility companies, oil  
388 industry and chemical plants were not happy, no, not one bit.  
389 So they made a TRAIN Act that says I can't we can't protect  
390 our children, I guess we can't keep our water clean, I guess  
391 we can't keep the air clean. These bills aren't trains that  
392 Americans should ride, they are train wrecks for our public  
393 health. Ending protections for clean air and clean water  
394 should be a third-rail issue but the Republican tea party  
395 express that runs the Congress has veered off onto the far  
396 right track. Sadly, these are just the kind of anti-  
397 innovation, anti-science, anti-public health schemes the  
398 public has come to fear from this legislation wrecking crew.  
399 I yield back.

400 [The prepared statement of Mr. Markey follows:]

401 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
402 Mr. {Whitfield.} Thank you very much for reminding us  
403 of the Little Engine that Could. We appreciate that.

404 At this time I recognize the gentleman from Illinois,  
405 Mr. Shimkus, for 2 minutes.

406 Mr. {Shimkus.} Thank you, Mr. Chairman. It sounded  
407 like a Grimm fairy tale there.

408 I think we can create jobs. I think we can create great  
409 wages with good benefits. I think and I know we can lower  
410 energy prices to help manufacturing and a thriving economy.

411 If you want a growing economy with new high-paying jobs,  
412 we have to return to the fossil fuel industry. The hearing  
413 record is clear: EPA does not comply with the President's  
414 Executive Order individually and they definitely do not do it  
415 collectively. Thanks to the TRAIN Act, we are going to  
416 address the train wreck that is coming for the fossil fuel  
417 sector. And again, in delaying the permitting, as the  
418 hearing record is also clear, by the EPA through its own  
419 internal processes delaying this Clean Air permit for 5 years  
420 has delayed the ability to explore and recovery oil, and  
421 again, at the hearing, everyone, even the opponents of the  
422 legislation, they do want the Trans-Alaskan Pipeline to  
423 remain open and the only way they are going to keep that  
424 thing open is if you fill it with oil, and if we are not able

425 to do that, that pipeline will close and the  
426 environmentalists will win, and we will have skyrocketing gas  
427 prices.

428           So both these pieces of legislation are critical.  
429 Thanks for bringing them forward, and I yield back my time.

430           [The prepared statement of Mr. Shimkus follows:]

431 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
432 Mr. {Whitfield.} Thank you, Mr. Shimkus.

433 At this time I recognize the gentleman from Texas, Mr.  
434 Green, for his 2-minute opening statement.

435 Mr. {Green.} Mr. Chairman, I don't have an opening  
436 statement. I would like to put one in the record and just  
437 say I support both these bills, and I enjoyed working with  
438 Mr. Gardner on his bill, the second one coming up.

439 [The prepared statement of Mr. Green follows:]

440 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
441 Mr. {Whitfield.} Thank you very much.

442 Mr. Burgess, you are recognized for 2 minutes for  
443 opening statement.

444 Dr. {Burgess.} Well, thank you, Mr. Chairman, and, you  
445 know, it is time to get people back to work. The two bills  
446 before us today are so simple and straightforward and  
447 intuitively obvious to the most casual of observers. They  
448 don't require hundreds of billions of dollars of taxpayer  
449 money. They don't give Washington more power over people's  
450 lives. They simply make Washington work better, and  
451 shouldn't that be everyone's goal? The past 2 years, we have  
452 seen failure heaped upon failure by this Administration and  
453 the previous Congress passing big government spending bills,  
454 and not only did they not put people back to work but they  
455 hindered the economy from righting itself.

456 Now, the Transparency and Regulatory Analysis, 1705,  
457 does what we have yet to get the Environmental Protection  
458 Agency to do itself since it began its overreach and  
459 overregulation. This bill will look at the regulations  
460 coming out of the agency, aggregate them and have independent  
461 oversight to review their cumulative impact, both positive  
462 and negative, that these rules can have on the economy and  
463 jobs. Now, how can you be opposed to that?



464           The Jobs and Energy Permitting Act will streamline the  
465 process by which the Environmental Protection Agency will  
466 determine the air permits in the arctic region, and it is  
467 also a simple and straightforward bill. We heard from  
468 witnesses as well as members on both sides of the dais that  
469 the 5 years that Shell has waited for a final agency  
470 determination on their exploratory permit is out of sync with  
471 the intent of the laws governing those permits. The EPA's  
472 own environmental advisory board is in fact out of control  
473 and not serving the public interest.

474           We do need accountability at the EPA, and this bill is  
475 just simply a step forward toward that result. This is the  
476 type of jobs legislation that the public sent us here to  
477 pass. Let us help and get America back to work.

478           I yield back the balance of my time.

479           [The prepared statement of Dr. Burgess follows:]

480 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
481           Mr. {Whitfield.} Thank you, Mr. Burgess.

482           At this time I recognize Mr. Walden for a 2-minute  
483 opening statement.

484           Mr. {Walden.} Thank you, Mr. Chairman. I appreciate  
485 not only the hearings we have had on this legislation but  
486 also our opportunity to actually mark it up and move America  
487 forward and put Americans back to work.

488           Look, I don't care wherever you go in this country, my  
489 district, anybody else's district, people are hurting. Gas  
490 prices are going up. Energy costs are going up. We are  
491 seeing it on the West Coast, the East Coast. You see it  
492 everywhere. That is hurting families. We are losing jobs in  
493 America. We are shoving them offshore. Meanwhile, we have a  
494 President that goes down to Brazil and says can't wait until  
495 you drill and pump and we will be the first to buy it.  
496 Really? That is not a forward-looking policy for our  
497 country. We need to cut back on these overzealous  
498 regulations that are driving jobs offshore and out of our  
499 reach. People are sick and tired of it.

500           Wherever I go in my district, small businesses, medium-  
501 sized businesses say just stop, let us catch our breath, let  
502 us get back on our feet, these regulations and regulations,  
503 and we have got charts that we can show you that just tell

504 you, it is not just one agency, it is multiple agencies you  
505 deal with when you are in business. I mean, these things get  
506 argued about as if they were the only thing that you deal  
507 with. You deal with incredible volumes of new rules and  
508 regulations coming out one on top of another on top of  
509 another, all these threats to progress in America while we  
510 are losing to foreign nations who are aggressively trying to  
511 grow their economies, grow their independence on energy and  
512 profit by our overzealous regulators.

513         Look, there is one thing we know about regulators: they  
514 are paid to write regulations, and they do a heck of a job of  
515 it day and night, and I will tell you what, they don't have  
516 to pay the price that is paid by those who are out trying to  
517 figure out how to implement those rules in their businesses  
518 and what they end up doing is cutting cost. You steal away  
519 the entrepreneurial spirit that allowed America to be a great  
520 country. We have to turn that around. This legislation and  
521 more to come does that, and I urge its approval.

522         [The prepared statement of Mr. Walden follows:]

523         \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
524 Mr. {Whitfield.} Thank you.

525 At this time I recognize the gentleman from California,  
526 Mr. Bilbray, for 2 minutes.

527 Mr. {Bilbray.} Mr. Chairman, I appreciate you bringing  
528 this bill up, and let me just say this as a Californian, and  
529 I guess this is one way to be able to have people on both  
530 sides of the aisle be able to agree about and see some  
531 perspective.

532 It seems like the message as a Californian I should  
533 bring is, we are doing to America what Californians have been  
534 doing to themselves for the last few decades, that meaning  
535 well, they take environmental regs and apply them in isolated  
536 situations without looking at the holistic impact is not only  
537 stupid but it is immoral, and Californians have been doing  
538 this to the point where when our scientists make major  
539 breakthroughs or develop great economic and environmental  
540 opportunities, they can't provide the jobs and the  
541 opportunity within California. They have to leave the State.  
542 And I will give you two instances. One is the environmental  
543 scientists over at Scripps Institute of Oceanography have  
544 developed genetically altered algae that can produce true  
545 gasoline, true oil and true jet fuel, and Californians  
546 invested in this. California taxpayers actually help

547 subsidized the system that did the research, but when it  
548 comes time to go into production, those scientists had to  
549 leave California, pack up and get out of the State because it  
550 would take more than 10 years to get the permits through the  
551 environmental regulations of California when it was only 9  
552 months in New Mexico, so they sited there.

553           When you had scientists and businesspeople figure out  
554 how to make a car that gets 200 miles to the gallon, when it  
555 came time for them to go to the Energy Department, the  
556 federal Energy Department said we will support you but only  
557 if you don't try to produce it in California because it is  
558 not practical to produce jobs in California.

559           I bring this up because we are doing the same thing  
560 nationally that has been done in the past in California, and  
561 I hope that we can avoid the problem in the other States, and  
562 I yield back.

563           [The prepared statement of Mr. Bilbray follows:]

564 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
565 Mr. {Whitfield.} Thank you, Mr. Bilbray.

566 At this time I recognize the gentleman from Louisiana,  
567 Mr. Scalise, for 2 minutes.

568 Mr. {Scalise.} Thank you, Mr. Chairman.

569 Since Republicans have been leading the House for the  
570 last few months, we have passed legislation that brings a  
571 commonsense approach to establishing an all-of-the-above  
572 energy strategy that will strengthen our country's energy  
573 security, create good jobs here at home, reduce our  
574 dependence on Middle Eastern oil, and lower gas prices at the  
575 pump. For too long, this Administration has led an all-out  
576 assault on domestic energy production and has insisted on  
577 shipping millions of American jobs overseas, oftentimes to  
578 countries who don't like us from radical EPA rules that will  
579 raise electricity costs on energy America to regulations on  
580 manufacturing that will result in higher prices on goods to  
581 consumers. This Administration must reverse these job-  
582 killing policies.

583 In my home State of Louisiana and all along the Gulf  
584 Coast where approximately one-third of our domestic oil and  
585 almost one-quarter of our domestic natural gas is produced,  
586 this Administration has insisted on blocking safe drilling  
587 off our coast by refusing to issue permits and stalling the

588 entire permitting process. This Administration is  
589 dangerously jeopardizing America's energy security, and these  
590 failed policies have already resulted in over 13,000 jobs  
591 lost. That is using the White House numbers, by the way.

592 Americans spoke loud and clear last fall that they want  
593 to end these radical liberal policies being pursued by this  
594 Administration and replace them with commonsense solutions  
595 that will put Americans back to work, get our economy back on  
596 track and eliminate wasteful Washington spending.

597 The bills before our subcommittee today are steps in the  
598 right direction toward these goals and will actually  
599 strengthen America's energy security and shine a light on the  
600 failed policies of this Administration. And just look at the  
601 results. We have talked about the President's failed  
602 policies and what they have done to gas prices. I call it  
603 the Obama premium, the fact that gas prices have more than  
604 doubled at the pump since the President has been in office  
605 and shut down so much area of known reserves in America. And  
606 then by the way, if you are not sure what I am saying, just  
607 look at the President's own words. Just look at his  
608 Administration. The President talked about have a gradual  
609 adjustment to near \$4 gallon gasoline in 2008.  
610 Unfortunately, he has gotten his wish and a lot sooner. His  
611 own Energy Secretary wants to boost gas prices to the levels

612 that they are in Europe. We don't want the gas prices in  
613 Europe. We don't want to boost our gas to \$4 a gallon. We  
614 can be energy secure and create good jobs here at home and  
615 lower gas prices at the pump, and that is what these bills  
616 do. I yield back.

617 [The prepared statement of Mr. Scalise follows:]

618 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*



|  
619 Mr. {Whitfield.} I recognize the gentle lady from  
620 Washington, Ms. McMorris-Rogers, for an opening statement.

621 Mrs. {McMorris-Rogers.} Thank you, Mr. Chairman.

622 We have an excellent opportunity to advance two of this  
623 new majority's priorities: economic growth and reducing our  
624 dependence on foreign oil. We are marking up two bills today  
625 that will help rein in the train wreck of regulations that  
626 are stifling economic growth and prosperity and clarify  
627 existing law so that responsible domestic oil exploration can  
628 proceed. The Federal Government should not and must not  
629 continue to stand in the way of American energy and American  
630 jobs. One guy in my district put it this way. He said there  
631 is a big elephant in the middle of the road, Cathy, and it is  
632 the Federal Government and it is getting harder and harder to  
633 get around it. Both of these bills before us today can help  
634 advance our basic principle.

635 Thank you, Mr. Chairman, and I yield back my time.

636 [The prepared statement of Mrs. McMorris-Rogers  
637 follows:]

638 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
639 Mr. {Whitfield.} Thank you very much.

640 At this time I recognize the gentleman from Texas, Mr.  
641 Olson, for 2 minutes.

642 Mr. {Olson.} Mr. Chairman, thank you for scheduling  
643 this markup today. I support both of these bills.

644 Earlier this year, President Obama promised a thorough  
645 review of federal regulations to eliminate burdensome  
646 regulations that stifle job creation and make our economy  
647 less competitive. I believe the TRAIN Act will help the  
648 President in achieving his stated goal of identifying federal  
649 regulations that are costing American jobs and taking a toll  
650 on our economy.

651 It is important for the American people to have an  
652 opportunity to understand the cumulative effects of EPA  
653 regulations on energy reliability, affordability and  
654 security. The TRAIN Act is the first step in determining  
655 just how big of an impact these regulations are having on our  
656 economy.

657 Similarly, federal agencies, especially the EPA, should  
658 tell the American people the number of jobs lost or gained  
659 from any proposed rule. I have introduced legislation that  
660 would do just that and would also require the EPA to provide  
661 the public with their analysis used to make that

662 determination.

663           In addition to the TRAIN Act, the Jobs and Energy  
664 Permitting Act before us will help clarify and improve the  
665 EPA's decision-making in air permitting off the coast of  
666 Alaska and restore much-needed certainty to that regulatory  
667 process. As we have heard in testimony before this  
668 committee, Shell Oil has already invested over \$3 billion in  
669 developing U.S. energy sources in the Outer Continental Shelf  
670 of Alaska. It is unconscionable that the necessary air  
671 permits to begin operations has taken 5 years with no end in  
672 sight. Let us get the Federal Government out of the way and  
673 create American jobs by developing American sources of  
674 energy.

675           With these two bills, we will make the Administration  
676 accountable for its regulatory actions and provide the  
677 certainty needed by the private sector to grow jobs and get  
678 our economy back on track.

679           I thank the chairman and look forward to moving these  
680 two bills forward through the full committee and the House  
681 Floor. I yield back.

682           [The prepared statement of Mr. Olson follows:]

683 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
684 Mr. {Whitfield.} Thank you very much.

685 At this time I recognize the gentleman from West  
686 Virginia, Mr. McKinley, for an opening statement.

687 Mr. {McKinley.} Thank you, Mr. Chairman.

688 Mr. Chairman, the TRAIN Act is the latest in a series of  
689 commonsense approaches that will seek to put the focus on  
690 economic development instead of environmental overreach and  
691 away from overeager federal bureaucrats who are more  
692 interested in creating regulatory policy instead of jobs.  
693 Oh, they say they are concerned about jobs but their actions  
694 say otherwise.

695 We have seen this particular case of overregulation and  
696 job destruction strike home in West Virginia with a  
697 retroactive veto of a mining permit in Logan County that cost  
698 us hundreds of jobs and millions of dollars in investment  
699 without any new sound science or documentation. One of the  
700 proposed regulations which H.R. 1705 would conduct analysis  
701 is the EPA's proposed coal ash regulation. Nearly 42 percent  
702 of fly ash is recycled, providing American businesses with  
703 the ability to recycle these products into various projects.  
704 This act would prevent also the utility company that would be  
705 discouraged from using coal as a means of creating  
706 electricity.

707           Courageously, standing up to the EPA, other agencies  
708 throughout the interagency comment period have concluded that  
709 fly ash is not hazardous. More openness and greater  
710 transparency were supposed to be the hallmark but what we are  
711 seeing, though, is we are seeing uncertainty swirling in the  
712 marketplace. Let us be sensible about what we are doing  
713 here. Congress should not allow unelected bureaucrats to  
714 decide to close a mine or shut down a rig without filing a  
715 comprehensive economic analysis. Hiding behind shameful  
716 scare tactics is pathetic and by those on the other side of  
717 this debate, it is unconscionable. I yield back my time.

718           [The prepared statement of Mr. McKinley follows:]

719 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
720 Mr. {Whitfield.} Thank you.

721 At this time I recognize the gentleman from Colorado for  
722 a 2-minute opening statement, Mr. Gardner.

723 Mr. {Gardner.} Thank you, Mr. Chairman, for holding  
724 this markup today on job creation and energy security, both  
725 the TRAIN Act and the Jobs and Energy Permitting Act of 2011.

726 Mr. Chairman, oil production in Alaska could reach up to  
727 1 million barrels of oil per day, which would reduce our  
728 dependency on foreign oil by nearly 10 percent under this  
729 Act. So to think that the Administration's policy toward  
730 Alaska has been so detrimental to development and production  
731 is simply baffling to me, which is why the Jobs and Energy  
732 Permitting Act is so vital.

733 The bill allows the EPA to do what it was meant to do  
734 without the bureaucratic red tape and the needless circles of  
735 appeals and litigation. It makes simple clarifications and  
736 some key changes that will responsibly and safely increase  
737 production in a resource-rich area like the Beaufort and  
738 Chukchi Seas where exploration has yet to even begin on  
739 leases that were signed over 5 years ago.

740 Mr. Chairman, we are all reeling from staggering prices  
741 at the pump, both Republican and Democrat alike. In fact,  
742 according to an analysis from Cameron Hanover, for every

743 penny the price of gasoline rises, it costs consumers  
744 millions of dollars a day. That is billions of dollars over  
745 an entire year, a small increase costing our economy jobs and  
746 family income.

747         Many estimates suggest that developing the Outer  
748 Continental Shelf has the potential to create over 50,000  
749 jobs annually and well over \$100 billion in payroll, jobs not  
750 only in Alaska but beyond as well. Increased oil and gas  
751 production in Alaska will result in jobs across the United  
752 States and moreover allowing companies to develop resources  
753 in Alaska will help the pain at the pump that all our  
754 constituents are feeling.

755         Mr. Chairman, thanks to the hard work of my colleague  
756 from Texas, Mr. Green, this final bill will be a product of  
757 numerous hearings, taking into account both praise and  
758 criticism of the draft bill we initially presented weeks ago,  
759 a bipartisan product that we can all be proud of. It  
760 continues to product State law in States like California  
761 which have delegated authority, continues to provide public  
762 and participation, and Administrator Lisa Jackson of the EPA  
763 has already said that there are no human health risks  
764 associated with this drilling.

765         This bill is a compilation of hard work, and I hope we  
766 can move it forward. Jobs and gas prices depend on it.

767 Thank you, Mr. Chairman.

768 [The prepared statement of Mr. Gardner follows:]

769 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*



|  
770 Mr. {Whitfield.} Thank you.

771 At this time I recognize the gentleman from Kansas, Mr.  
772 Pompeo, for a 2-minute opening statement.

773 Mr. {Pompeo.} Thank you, Mr. Chairman.

774 And I want to talk about an example. Sometimes we talk  
775 about these regulations in the air, and I want to give a real  
776 example. But first I want to thank Mr. Sullivan of Oklahoma  
777 and Mr. Matheson of Utah for introducing H.R. 1705.

778 You know, in Kansas we have been trying to build a power  
779 plant called Holcomb 2 for years now. It is one of the most  
780 technologically advanced units in the State of Kansas with  
781 emissions that will be only a fraction of the average coal  
782 plant in the State. What is tragic about Holcomb is that  
783 despite this innovation we are seeing, EPA's new Utility MACT  
784 Rule will make it impossible for this project to get off the  
785 ground. The emissions standards for mercury and non-mercury  
786 metals alone will be at such low levels that I am very  
787 concerned that they are not even technologically feasible.

788 You know, good people can have disagreements about some  
789 EPA regulations but our common goal should be cleaner air  
790 without unnecessarily compromising jobs and economic growth.  
791 The power plant at Holcomb alone would create over 3,000  
792 Kansas jobs.

793           That is why 1705 is so critical. It requires  
794 commonsense examination of so many of EPA's disastrous  
795 regulations including the Utility MACT, coal ash and the  
796 Greenhouse Gas New Source Performance Standards for petroleum  
797 refineries and utilities.

798           Look, ideally I would like to see all of EPA's train  
799 wreck rules rescinded and have them go back to the drawing  
800 board to create workable, health-based solutions. I doubt I  
801 would have many friends on the other side of the aisle  
802 support me on this. But I can't understand how anyone could  
803 be opposed to a temporary interagency committee that solely  
804 looks at the economic impact of a very specific set of EPA  
805 regulations. I think the TRAIN Act is a very good first  
806 step. Frankly, I would like to see this legislation go  
807 further and require cumulative analysis of all EPA  
808 regulations going forward so I find it hard to believe that  
809 anyone could oppose this commonsense bill.

810           With that, Mr. Chairman, I yield back my time.

811           [The prepared statement of Mr. Pompeo follows:]

812           \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
813 Mr. {Whitfield.} Thank you very much.

814 I recognize the gentleman from Texas, Mr. Barton, for  
815 the purposes of opening statement.

816 Mr. {Barton.} Thank you, Mr. Chairman, and thank you  
817 for extending me the courtesy. I know I am a little bit  
818 late. I appreciate today's markup on these two bills: H.R.  
819 1705, the Transparency in Regulatory Analysis on the Nation  
820 Act of 2011 and the discussion draft of the Jobs and Energy  
821 Permitting Act of 2011.

822 The Environmental Protection Agency has not conducted  
823 the required and expected impact analysis of the multiple  
824 rules they plan to impose within the New Source Performance  
825 Standards. The impact analysis is of vital importance  
826 because of the broad spectrum of industries that these  
827 regulations will affect. We are talking about not only  
828 utility companies but also agriculture, waste management,  
829 residential and commercial facilities. It is estimated that  
830 the EPA proposal will severely restrict economic development  
831 and industrial growth nationwide. EPA's own estimates of the  
832 annual compliance costs to industries is somewhere between  
833 \$19 million to \$90 million per year by the year 2020 just for  
834 the proposed ozone standard. For all of the other standards  
835 under the New Source Performance Standards, the estimated

836 costs to the industry and consumers are hundreds of million  
837 of dollars and the loss of over 1 million jobs. In a bad  
838 economy, why would the EPA or, for that matter, any  
839 regulatory agency propose such outrageous regulatory  
840 standards without any regard to how these regulations will  
841 actually affect the Nation. They have provided absolutely no  
842 proof that the standards they wish to impose will provide any  
843 measurable value or health benefits that outweigh the cost to  
844 consumers and our overall economy.

845         Let us talk about the facts. The EPA is attempting to  
846 put a chokehold on our own industry and job development by  
847 imposing standards that produce cause and effect the world  
848 can see. In the Electric Generating Unit, EGU, Maximum  
849 Available Control Technology, also known as the Utility MACT,  
850 the EPA has created several errors. In preparing for its  
851 rulemaking, the EPA issued an information collection request  
852 of unprecedented size and scope for a section 112 rulemaking.  
853 The Utility Air Regulatory Group has found widespread errors  
854 in the way the EPA used to convert historical emissions data  
855 to common emissions units. This is important. Specifically,  
856 the conversion factor that the EPA used to convert  
857 measurements reported in terms of pounds per gigawatt to  
858 pounds per megawatt is incorrect by a factor of 1,000. I  
859 want to repeat, it is incorrect by a factor of 1,000, order

860 of magnitude 1,000, Mr. Chairman.

861 Now, we all know the phrase ``close enough for  
862 government work,'' but an order of magnitude error of 1,000?  
863 Give me a break. As a result, the emissions of the unit  
864 chosen as the single best performing mercury are actually  
865 1,000 times higher than those that the EPA assumed in setting  
866 the new MACT standard for mercury. This conversion error  
867 also pervades EPA's mercury MACT floor analysis for existing  
868 units.

869 There is also concern that significant errors were made  
870 in the risk calculations reported by the EPA in an attempt to  
871 support appropriate and necessary findings. Modeling  
872 assumptions have just been provided within the last 2 weeks  
873 to the appropriate agencies so specific errors have yet to be  
874 identified.

875 I could go on, Mr. Chairman, but I think I am making my  
876 point. EPA does not really care about doing an effective, in  
877 my opinion, cost-benefit analysis. It does not really care  
878 about the nuts and bolts, the technical requirements to set  
879 these standards correctly. As a result, who knows?

880 So that is why this committee's bill, Mr. Chairman, is  
881 so important. I am in complete agreement that it is  
882 absolutely a necessary to establish an interagency committee  
883 to analyze the impacts that the proposed regulations might

884 have on our country. H.R. 1705 addresses these issues and  
885 allows us the opportunity to analyze these decisions before  
886 we bankrupt the country.

887         With regards to the Outer Continental Shelf, it is so  
888 crucial to our Nation's energy security that we should keep  
889 the Alaska pipeline for our friends in California and the  
890 rest of the country. Without this pipeline, California,  
891 Washington State and Alaska will suffer untold economic harm.  
892 The red tape between the EPA and the Environmental Appeals  
893 Board in getting permits for leases obtained 5 years before  
894 shows that both agencies have been economically irresponsible  
895 to the industries that have invested in the future of this  
896 country.

897         I want to thank you, Mr. Chairman, for bringing it to  
898 the country's attention and hopefully we can move this bill  
899 to prevent similar problems in the future. With that, I  
900 yield back.

901         [The prepared statement of Mr. Barton follows:]

902 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
903 Mr. {Whitfield.} Thank you.

904 Before I recognize Mr. Griffith of Virginia, I just want  
905 to make an announcement that the Prime Minister of Israel is  
906 addressing a joint session of Congress at 11 a.m. We are  
907 doing to recess for that and then 10 minutes after that we  
908 are going to come back, we are going to debate the  
909 amendments, and at 1:00 we are going to roll all the  
910 amendments and we are going to vote at 1:00 basically on the  
911 amendments on this first bill.

912 Mr. Griffith, you are recognized for 2 minutes.

913 Mr. {Griffith.} Thank you, Mr. Chairman.

914 Coming from the State legislature, I learned early on it  
915 is the obligation of legislators to accumulate information  
916 and have all the data present so that they can make  
917 decisions. Regrettably, I find in Congress that not only do  
918 we not want to accumulate the information but for some reason  
919 we believe that the agencies of the administrative branch  
920 that were originally created by Congress should have more  
921 power than Congress itself. I for one do not believe that.  
922 I believe that Congress is where the decisions should be made  
923 and I think that without passing this bill and other bills  
924 like this, we are not doing our obligation to the voters.  
925 Whether you are Democrat or Republican, we have an obligation

926 to require this information.

927         In my recent campaign, one of my supporters, Jim Ferrare  
928 of Abington, Virginia, came up with a slogan that started  
929 showing up on pins and bumper sticks that said ``Who Elected  
930 the EPA?'' Well, nobody elected the EPA, and our citizens,  
931 again, whether Democrat or Republican, liberal or  
932 conservative, expect the United States Congress to make the  
933 decisions and not some unelected bureaucrat.

934         And last but not least, Mr. Chairman, I would point out  
935 that if we are talking about the little engine that could, we  
936 should remember its historical context. The little engine  
937 that could was a steam engine. The story first appeared in  
938 1905, which means that today one can assume it used coal or  
939 wood to power it, and one would have to assume today that  
940 under the current regulatory scheme, when the little engine  
941 found out it couldn't make it up the hill and nobody else was  
942 willing to help it get up that hill, it would have to go to  
943 the EPA and ask for permission to use more energy because it  
944 was going to create a larger carbon footprint in order to get  
945 over that hill.

946         So I would submit to you, ladies and gentlemen, we need  
947 to support this bill so the little engine that could, could  
948 continue to bring jobs to the American public. Thank you.

949         [The prepared statement of Mr. Griffith follows:]



950 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
951 Mr. {Whitfield.} Mr. Griffith, thank you again for  
952 bringing up the little engine.

953 At this time we are going to recess for the Prime  
954 Minister of Israel's remarks and then we are going to  
955 reconvene 10 minutes after that. We will debate the  
956 amendments and then roll them until 1:00. We are in recess.

957 [Recess.]

958 Mr. {Whitfield.} The chair calls the markup back to  
959 order.

960 When we took a recess, I had indicated that we were  
961 doing to debate these amendments and then we would roll them  
962 until about 1:00 for a vote at 1:00 on the amendments.  
963 Subsequent to that announcement, we now realize that many of  
964 our friends are having a private meeting with the Prime  
965 Minister of Israel between 1:00 and 1:30, so we are going to  
966 start discussion of the amendments and then we are going to  
967 roll the votes until probably 1:30, and at that time we do  
968 expect that most of the members will be back and be able to  
969 vote on those amendments.

970 Did you want to make a comment, Mr. Rush?

971 Mr. {Rush.} Mr. Chairman, I just wanted to say that I  
972 really want to allow members who are not present now who will  
973 be here, who are expected to be here at 1:30 later hopefully

974 that meeting with Prime Minister Netanyahu that it ends on  
975 time but our mounting concern is that members would show up  
976 subsequent to us hearing the amendments to any of these  
977 bills, any of the two bills, and the debate that would take  
978 place at this point in time, that any member that shows up  
979 subsequent to us concluding debate will also have an  
980 opportunity to voice their opinion, to engage in debate when  
981 it is that they show up. So they won't be showing up just  
982 for a vote but that the process still will be open so that  
983 they will be able to engage in debate also. That is my  
984 point.

985       Mr. {Whitfield.} I mean, I think that we can  
986 accommodate that but the intent is that we are going to go on  
987 on this bill. We know that there are three amendments to the  
988 TRAIN Act so we are going to go on and have those amendments  
989 introduced and explained and we can go both sides talking the  
990 pros and cons of them and then we will roll those votes until  
991 1:30, and at that time if members of your side of the aisle  
992 come in and want to have some comment about them, then I  
993 don't think there would be a problem on that but then we will  
994 be voting on it at that time.

995       Mr. {Rush.} All right.

|

996 H.R. 1705

997 Mr. {Whitfield.} The chair at this time will call up

998 H.R. 1705 and ask the clerk to report the bill.

999 The {Clerk.} H.R. 1705, to require analyses of the  
1000 cumulative and incremental impacts of certain rules and  
1001 actions of the Environmental Protection Agency, and for other  
1002 purposes.

1003 [H.R. 1705 follows:]

1004 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|  
1005           Mr. {Whitfield.} And without objection, the first  
1006 reading of the bill is dispensed with and the bill will be  
1007 open for amendment at any point.

1008           Mr. Sullivan, I think you have an amendment. I will  
1009 recognize you for the purposes of explaining your amendment.

1010           Mr. {Sullivan.} Thank you, Chairman Whitfield.

1011           Mr. {Whitfield.} The clerk will report the amendment.

1012           The {Clerk.} An amendment offered by Mr. Sullivan of  
1013 Oklahoma.

1014           [The amendment follows:]

1015 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
1016 Mr. {Whitfield.} The gentleman is recognized for 5  
1017 minutes.

1018 Mr. {Sullivan.} Thank you, Chairman Whitfield. I have  
1019 an amendment to H.R. 1705, the Transparency in Regulatory  
1020 Analysis of Impacts on the Nation Act.

1021 At introduction of this bill, we acted with an abundance  
1022 of caution to include an authorization of \$2 million for  
1023 purposes of carrying out the analysis that would be required  
1024 by the TRAIN Act. My amendment would cut section 5 of the  
1025 bill as we now feel that the specific appropriation is not  
1026 necessary, especially in light of our record national debt.  
1027 We now believe that this work can and in fact should be  
1028 completed using existing resources under the current  
1029 operating budgets of the 11 agencies that are called upon to  
1030 support this effort.

1031 Each of the members agencies brings to this effort the  
1032 experience of staff that are already dedicated to the  
1033 analysis of regulatory and policy impacts. In fact, each  
1034 economically significant regulation issued by the  
1035 Environmental Protection Agency is subject to interagency  
1036 review by these member agencies using guidance and methods  
1037 specified in this bill.

1038 We fully expect that each of the committee members will

1039 draw upon existing regulatory analysis capabilities that  
1040 reside within each of their agencies. During these times of  
1041 fiscal responsibility, we believe it is important to leverage  
1042 existing expertise and resources rather than duplicate  
1043 activities that may already be underway.

1044 I also note that the adoption of this amendment will  
1045 keep our bipartisan legislation in compliance with both  
1046 Chairman Upton's principles for our markups and Majority  
1047 Leader Cantor's protocols for Floor consideration under  
1048 discretionary CutGo principles.

1049 I encourage all members of this committee to support my  
1050 amendment and I yield back the balance of my time.

1051 Mr. {Whitfield.} Mr. Sullivan, thank you very much.

1052 Mr. Rush, do you have any comments?

1053 Mr. {Rush.} Thank you, Mr. Chairman.

1054 Mr. Chairman, I have to say that I am not in agreement  
1055 to this amendment and I oppose this amendment. This  
1056 amendment eliminates section 5 of the TRAIN Act, which  
1057 authorizes \$2 million to carry out the study mandated by the  
1058 bill. Essentially, this replaces the \$2 million  
1059 authorization for the TRAIN Act with an unlimited blank check  
1060 to be paid at taxpayer expense.

1061 Mr. Chairman, you and I will probably agree that it is a  
1062 basic rule of legislation that whenever Congress imposes a

1063 duty or an obligation on the Executive Branch, it is an  
1064 implicit authorization to appropriate ``such sums as are  
1065 necessary'' to carry out the duty or obligation. Therefore,  
1066 voting for this amendment is the same as voting to authorize  
1067 federal agencies to spend such sums as are necessary. This  
1068 is a huge new federal expenditure of taxpayer dollars.

1069         As I noted in my opening statement, this bill requires  
1070 11 federal agencies to conduct extremely detailed economic  
1071 modeling on a long list of specified federal regulations and  
1072 other potential federal, State and local regulations or other  
1073 actions. Just gathering information on each on these rules  
1074 would be an extremely expensive undertaking. The most recent  
1075 Continuing Resolution slashed funding for important data  
1076 gathering by the Energy Information Administration on energy  
1077 use. I strongly oppose cutting those programs, but that  
1078 decision was made because such efforts do cost money. The  
1079 data gathering required by this bill would be far more  
1080 expensive and cost far more.

1081         In addition, the agencies would have to hire contractors  
1082 to run sophisticated and expensive computer models and they  
1083 will have to analyze and write up the results. Mr. Chairman,  
1084 this is not a minor exercise.

1085         I also find the majority's willingness to drop  
1086 authorization language today quite curious. The majority



1087 began this Congress by saying that CutGo would apply to  
1088 committee legislation. Every new program authorization must  
1089 be accompanied by an equivalent cut in other authorized  
1090 programs in the committee's jurisdiction. But now on the  
1091 first bill that poses a challenge, the majority is attempting  
1092 to evade its own requirement by dropping the authorization  
1093 language.

1094 Mr. Chairman, this is evidence of what an empty promise  
1095 CutGo was in the first place, and I yield back the balance of  
1096 my time.

1097 Mr. {Whitfield.} Thank you very much.

1098 The gentleman from Illinois is recognized.

1099 Mr. {Shimkus.} Thank you, Mr. Chairman. I speak in  
1100 support of the amendment.

1101 I would just say that as we found out in one of the  
1102 hearings that there are 17,000 employees at EPA, similar  
1103 numbers throughout the other agencies that would have to do  
1104 that. Surely they could find folks to do this, and I kind of  
1105 reject the premise that this is--they should be able to find  
1106 the people and the funds to be able to do this within the  
1107 existing budgetary authorization. I yield back.

1108 Mr. {Whitfield.} Thank you.

1109 Is there anyone else on this side of the aisle who would  
1110 like to speak?

1111 I would just make one comment also. I think Mr. Rush is  
1112 correct, there are 11 departments and/or agencies involved in  
1113 this legislation. All of them have budgets and sources of  
1114 funds through the appropriation process, and we do genuinely  
1115 believe that they would be able to fulfill the  
1116 responsibilities and obligations of this legislation without  
1117 the specific authorization of another \$2 million. So I think  
1118 that is the purpose of Mr. Sullivan's amendment.

1119 Mr. {Rush.} Would you yield, Mr. Chairman?

1120 Mr. {Whitfield.} Yes, sir.

1121 Mr. {Rush.} Mr. Chairman, in this morning's opening  
1122 statements, we focused on fairy tales. Now we are hearing  
1123 allegories. And let me just say allegorically, Mr. Chairman,  
1124 that we are opening up Pandora's Box. I want you to  
1125 recognize that Pandora's Box is now officially open in this  
1126 committee because now we are eliminating our own CutGo  
1127 provision and standards and now we are making an argument  
1128 that whatever department has a number of employees, then  
1129 CutGo will not apply to that department. I yield back to  
1130 you, Mr. Chairman.

1131 Mr. {Whitfield.} Thank you very much, and I appreciate  
1132 your bringing up the Pandora's Box issue as well.

1133 Is there any other further discussion on this particular  
1134 amendment? If not, then according to the stated policy in

1135 the beginning, we will delay the vote on this amendment until  
1136 1:30, unless you all want to do a voice vote.

1137 Mr. {Rush.} No, Mr. Chairman, I think we ought to have  
1138 respect for other members who are not present who are meeting  
1139 with Prime Minister Netanyahu and we should continue to hold  
1140 the vote and keep the record open for any other comments.

1141 Mr. {Whitfield.} Okay. Then we are finished with that  
1142 amendment.

1143 Are there any further amendments to this legislation?

1144 Mr. {Rush.} Mr. Chairman, I have an amendment at the  
1145 desk.

1146 Mr. {Whitfield.} Will the clerk report the amendment?

1147 Mr. {Rush.} It is Rush 34.

1148 The {Clerk.} An amendment offered by Mr. Rush of  
1149 Illinois.

1150 [The amendment follows:]

1151 \*\*\*\*\* INSERT 3 \*\*\*\*\*

|  
1152 Mr. {Whitfield.} The gentleman is recognized to explain  
1153 his amendment.

1154 Mr. {Rush.} Thank you, Mr. Chairman.

1155 Mr. Chairman, in almost every single bill introduced in  
1156 this subcommittee under the banner of the so-called American  
1157 Energy Initiative, which we just completed our eighth hearing  
1158 on yesterday, my friends on the other side of the aisle have  
1159 attempted to reduce the red tape and streamline the process  
1160 to make it easier for oil companies to drill without delay,  
1161 even if it meant sidestepping the input of States and local  
1162 communities. A case in point is the second bill we are  
1163 marking up today, which attempts to make it easier for Shell  
1164 to acquire the permits they need to begin drilling in the  
1165 Outer Continental Shelf and Alaska in an expeditious manner  
1166 by cutting out State and community input. Yet in place of  
1167 this legislation, the TRAIN Act, we have the majority  
1168 attempting to do just the opposite: add an extra layer of  
1169 red tape and create yet another committee to study the  
1170 impacts of proposed EPA regulations to delay implementation  
1171 even though by law the agency is already required to do so.

1172 Unfortunately, my friends on the other side of the aisle  
1173 conveniently left off the health effects of the proposed  
1174 regulations as one of the cumulative impacts that this bill

1175 would analyze. I understand that for some of my colleagues,  
1176 if a regulation cannot be monetized, then it has no benefit,  
1177 but for many communities that do not have the money and  
1178 connections of the oil and gas industries, there is no more  
1179 important benefit than protecting their health and their  
1180 livelihood.

1181         So the amendment that I am offering today will do  
1182 precisely that. It will amend this bill to include important  
1183 environmental protection and health agencies that were  
1184 omitted from the original bill. My amendment will add the  
1185 chair of the Council on Environmental Quality, The Secretary  
1186 of Health and Human Services as well as the Director of the  
1187 Centers for Disease Control and Prevention, among others, to  
1188 the interagency council that this bill would create.

1189         Additionally, my amendment would direct the committee to  
1190 look at the important health impacts that would be affected  
1191 by EPA's proposed rules including asthma rates, birth  
1192 defects, premature mortality, and the effect of promoting  
1193 clean energy jobs and technologies. If some of my colleagues  
1194 were worried that existing studies that have already been  
1195 conducted focus too heavily on health and environmental  
1196 impacts of proposed EPA rules and they do not sufficiently  
1197 take into account the jobs and the economic analysis, then  
1198 let us not make the same mistakes on this bill. Let us make

1199 sure the committee established under this bill takes a  
1200 balanced and unbiased approach that the majority feels that  
1201 previous studies could be slanted. By including health and  
1202 environmental impacts of proposed rules, we can ensure that  
1203 this bill enjoys the support of a much larger coalition as it  
1204 moves its way through the legislative process.

1205         So I urge all of my colleagues to support this  
1206 amendment, and with that, I yield back the balance of my  
1207 time.

1208         Mr. {Whitfield.} Thank you.

1209         The chair will recognize Mr. Griffith for comments on  
1210 this amendment for 5 minutes.

1211         Mr. {Griffith.} Mr. Chairman, my concern with this  
1212 amendment and others like it and the language in this regard  
1213 is that these amendments always want to look at the resulting  
1214 reduction in asthma by virtue of the new regulation. They  
1215 want to look at the reduction in various types of birth  
1216 defects, etc. But it never talks about the other side of the  
1217 health equation, which is that when you make the cost of  
1218 heating your home more expensive, then people have to start  
1219 choosing, particularly in the areas that are not as affluent,  
1220 they have to choose between heating their homes and whether  
1221 or not they put food on the table. So if we were going to  
1222 have a real discussion about the health impacts of a

1223 particular regulation, I think it shouldn't just talk about  
1224 how the regulation helps but it should also be looking into  
1225 how the regulation hurts because if we make the cost of fuel  
1226 go up, whether it be electricity rates or the cost of  
1227 gasoline or the cost of fuel oil for people's homes, that has  
1228 a direct impact on their health and unfortunately the  
1229 language in the amendment proposed does not address that at  
1230 all. It only looks at the positive side. It doesn't look at  
1231 the negative side.

1232         Because a lot of these regulations in a real-world  
1233 experience cause problems. We have seen significant  
1234 increases in the cost of electricity in my district, and as a  
1235 result of that, I know that there are families out there, and  
1236 in fact, the Democrat minority leader in the Virginia House  
1237 of Delegates just last year was railing on the floor about  
1238 how constituents who live in the 9th district of Virginia and  
1239 overlap in his district are not able to heat their homes  
1240 because of the rising of electric rates.

1241         So I would submit, Mr. Chairman, that we should vote  
1242 against this amendment, that it doesn't--it only looks at one  
1243 side of that issue. If we want to look at all health impacts  
1244 including the rising cost of energy, etc., or the cost of  
1245 these regulations as it relates to the consumer and the  
1246 health effects on those consumers, particularly those who are

1247 less economically advantaged, then perhaps the amendment  
1248 might have some merit, but as it is written, it has no merit.

1249 Thank you, Mr. Chairman. I yield back my time.

1250 Mr. {Whitfield.} Thank you, Mr. Griffith.

1251 Ms. Capps, you are recognized for the purpose of  
1252 speaking on the amendment.

1253 Mrs. {Capps.} Thank you, Mr. Chairman. I want to offer  
1254 my support to the Rush amendment.

1255 Mr. Chairman, this amendment brings balance to the TRAIN  
1256 Act. I believe without such balance, the analysis wouldn't  
1257 be credible or useful. Even with the adoption of this  
1258 amendment, I would remain concerned that the required  
1259 analysis may simply not be possible to conduct, but the  
1260 balance provided by this amendment is essential, if not  
1261 sufficient to ensuring a high-quality and credible product.

1262 At the hearing on this bill, several witnesses expressed  
1263 concern that the analysis required by this bill would focus  
1264 only on cost, not on benefits. I appreciate that the  
1265 sponsors made changes to respond in part to those concerns  
1266 but in several ways the analysis remains unbalanced. As  
1267 currently drafted, important economic impacts like reduction  
1268 in the number of work and school days missed or reduction in  
1269 the occurrence of adverse health effects and savings due to  
1270 decreased use of emergency medical services wouldn't be



1271 specifically included. The analysis would consider impacts  
1272 on small businesses and agriculture but not vulnerable  
1273 subpopulations and developing infants and children.

1274 The Rush amendment would correct that imbalance. It  
1275 would also ensure that the makeup of the committee is  
1276 balanced by including departments and offices who have  
1277 expertise in health, disease and environmental quality. This  
1278 kind of balance is essential to ensuring a high-quality and  
1279 credible product.

1280 So I urge my colleagues to support this amendment to  
1281 bring balance to this committee and this analysis, and I  
1282 yield back.

1283 Mr. {Whitfield.} Thank you, Ms. Capps.

1284 Is there anyone on our side of the aisle that would like  
1285 to speak on the amendment?

1286 I would just make one comment. When EPA did analysis of  
1287 the impact of these regulations, they spent a great deal of  
1288 time and energy looking at health benefits from these  
1289 regulations, and really, one of the reasons this legislation  
1290 was introduced is that we did not feel there was a thorough  
1291 enough analysis for the impact on the economy, on jobs, on  
1292 global competitiveness, and we felt that the health benefits  
1293 had already been thoroughly analyzed by EPA before they  
1294 issued the regulations, so that is the reason that we did not

1295 include it in the bill.

1296 Mr. {Griffith.} Mr. Chairman, would the gentleman  
1297 yield?

1298 Mr. {Whitfield.} Yes, I yield to the gentleman.

1299 Mr. {Griffith.} Mr. Chairman, that is the reason I made  
1300 my comments because when we had a hearing earlier, one of the  
1301 things that was said, I raised that issue about the costs and  
1302 what happened when they were looking at some regulations,  
1303 what happened when you raised those costs on heating, and the  
1304 Administrator basically came back with, and I paraphrase,  
1305 something to the effect of well, there are programs to help  
1306 people, we don't want to freeze anybody. But it appeared to  
1307 me from that statement that there was not even in the EPA's  
1308 analysis of the health while it covered all the things that  
1309 this amendment covered, they did not actually look at what  
1310 the ramifications would be when the cost to heat your home  
1311 went up, and that was the reason I made my comments earlier.

1312 Mr. {Whitfield.} Well, I mean, I agree with you, and  
1313 there are so many regulations coming out, I honestly do  
1314 believe we would be missing our responsibility if we do not  
1315 do a complete analysis of the cumulative impact of all these  
1316 regulations.

1317 So with that--

1318 Mr. {Rush.} Would you yield to me for just one moment?

1319 Mr. {Whitfield.} I would be happy to yield to the  
1320 gentleman.

1321 Mr. {Rush.} Mr. Chairman, I think you used the word  
1322 ``thorough'' in your remarks, and I think that is the  
1323 operative word. We want to make this bill as thorough and as  
1324 comprehensive as we possibly can, and I certainly agree with  
1325 the gentleman from Virginia. I think we have more in common  
1326 than we might disagree on because obviously he represents a  
1327 district where there are economically challenged individuals,  
1328 and so do I. So we have a problem with the rising cost of  
1329 heating in my district too, but these matters, what I  
1330 understand is that the underlying bill addresses these  
1331 particular matters and I am just asking for some additional  
1332 concern and additional input from those who are responsible  
1333 for the overall health being from an economic perspective or  
1334 some other kind of perspective, the overall health  
1335 considerations of all the individuals.

1336 And so I think that the gentleman and I are in  
1337 agreement. I just want the bill to be more thorough and to  
1338 specifically address the issues of health-related matters.

1339 Mr. {Whitfield.} Thank you, Mr. Rush, and reclaiming my  
1340 time.

1341 I think that concludes all discussion on this particular  
1342 amendment and so we will also roll the vote on this until

1343 1:30.

1344           Are there any further amendments to this particular  
1345 legislation? The gentlelady from California is recognized to  
1346 explain her amendment.

1347           Mrs. {Capps.} Yes, I have an amendment at the desk.

1348           Mr. {Whitfield.} Would the clerk please report the  
1349 amendment?

1350           The {Clerk.} Amendment number one?

1351           Mrs. {Capps.} Yes, please.

1352           The {Clerk.} An amendment offered by Ms. Capps of  
1353 California.

1354           [The amendment follows:]

1355 \*\*\*\*\* INSERT 4 \*\*\*\*\*

|  
1356 Mr. {Shimkus.} The gentlelady is recognized for the  
1357 purpose of explaining her amendment.

1358 Mrs. {Capps.} Thank you, Mr. Chairman.

1359 It is my hope that we can simply all agree to this  
1360 amendment. We do live in a world of limited resources, and  
1361 my amendment seeks to ensure that those resources are used  
1362 wisely.

1363 As currently drafted, H.R. 1705 would require a dizzying  
1364 number of analyses of EPA rules. History shows us that it  
1365 would take years to conduct studies like these. For  
1366 instance, in 2003, Congress asked the National Academy of  
1367 Sciences to examine the effects of just two EPA rules  
1368 relating to stationary sources. That study took 3-1/2 years  
1369 to complete. The TRAIN Act is much more far-reaching than  
1370 this. It calls explicitly for more than a dozen rules to be  
1371 analyzed as well as other rules and actions that may be  
1372 proposed over the next two decades, and it doesn't stop  
1373 there. Because the Clean Air Act allows State and local  
1374 governments flexibility as to how they achieve healthy air,  
1375 the legislation also requires analysis of potentially  
1376 hundreds of State and local rules. It is not even limited to  
1377 the currently proposed rule, and all of the analysis must be  
1378 completed by next August. There is a real question about

1379 whether this is even remotely feasible.

1380 My amendment simply states that the committee created by  
1381 H.R. 1705 should perform analyses to the extent they are  
1382 feasible, given available information first, and second, the  
1383 limitations of economic modeling, and third, available  
1384 funding. It also allows the committee to complete the  
1385 analysis to the extent the information produced is useful to  
1386 policymakers and stakeholders. If the analyses are not  
1387 feasible or not useful, we should not be spending taxpayer  
1388 resources on them. I hope that is something we could agree  
1389 about.

1390 Let me give you an example. Section 3(B)(1)(b) requires  
1391 that the committee use a, and this is a quote, ``general  
1392 equilibrium model approach.'' I have my doubts that this is  
1393 a wise statutory requirement. The subcommittee has received  
1394 no testimony on this particular analytic method, and it is  
1395 not common to spell out specific economic modeling approaches  
1396 in statute. Moreover, my understanding is that this approach  
1397 is particularly ineffective at capturing and placing value on  
1398 hard-to-monetize benefits like developmental problems in  
1399 children attributable to exposure to pollution.

1400 Under my amendment, the committee would be able to  
1401 bypass this requirement if it isn't feasible or useful to do  
1402 it. My amendment also charges the committee to carry out the

1403 law in such a way that it doesn't delay or interfere with  
1404 other statutory or legal obligations. This is a commonsense  
1405 amendment. It attempts to make a Herculean task more  
1406 manageable given the time and the resource limitations before  
1407 us, and that is why I urge my colleagues to vote yes on this  
1408 amendment, and I yield back.

1409 Mr. {Whitfield.} Thank you, Ms. Capps.

1410 Is there anyone on our side of the aisle who would like  
1411 to speak in opposition to her amendment?

1412 Mr. {Shimkus.} I would, Mr. Chairman.

1413 Mr. {Whitfield.} The gentleman is recognized for 5  
1414 minutes.

1415 Mr. {Shimkus.} Thank you, Mr. Chairman.

1416 I would just say what we are trying to do is get the  
1417 national government to comply with the President's Executive  
1418 Order, which he signed on January 18th that said we need to  
1419 have a job impact analysis of these regs. In testimony with  
1420 the EPA, they haven't done it, and they won't do it, and the  
1421 provision of this says let us get the federal agencies to  
1422 comply and let us look at the multitude of regulations that  
1423 come down, i.e., the train wreck, the Boiler MACT, the  
1424 Mercury MACT, cooling towers, Transport Rule. You name them,  
1425 they are all coming down, especially on the fossil fuel  
1426 electricity generation, and we are saying we ought to at

1427 least comply with what the President said. Let us do an  
1428 economic analysis.

1429 The EPA is already doing their health analysis. That is  
1430 why they are promulgating these rules. We are just asking,  
1431 and really, we would be dictating to these agencies, do what  
1432 the President said and let us get a job and economic  
1433 analysis.

1434 Now, if you take all the agencies involved, 10 of them,  
1435 surely they can put together a handful of folks to do this.  
1436 We know the EPA has 17,000 employees. Multiply that by five,  
1437 and that is probably how many federal employees that are  
1438 already on the payroll who can do this job, and that is all  
1439 we are saying, direct these folks to work together to move  
1440 this so that we can have an understanding in this economy  
1441 with the loss of jobs that the attack on the fossil fuel  
1442 industry by this Administration has to stop if we want low-  
1443 cost power and we want more fossil fuel jobs.

1444 Mrs. {Capps.} Would the gentleman yield?

1445 Mr. {Shimkus.} I would be happy to yield.

1446 Mrs. {Capps.} You know, granted that that is a goal and  
1447 a worthwhile goal, why not give this committee the  
1448 jurisdiction or the task, let us put it this way, to take on  
1449 a large organization as you have already said that has many  
1450 mandates it has been given and in a commonsense approach what



1451 is the rational way we can do this. I mean, these efforts  
1452 are going to require taxpayer dollars. Wouldn't it be wise  
1453 to do it in an orderly fashion?

1454 Mr. {Shimkus.} Reclaiming my time. And I would say  
1455 that is what we are doing. I would say we are trying to get  
1456 an interagency group of people who are already on the payroll  
1457 to evaluate these regs and comply with what the President  
1458 asked his government to do, which is give us a job and  
1459 economic analysis. Now, they may say they may do it for one  
1460 rule or reg but again, the great thing about this piece of  
1461 legislation, no one is doing a comprehensive analysis of the  
1462 economic impact of four or five regulations coming down on  
1463 one sector at one time. That is why this interagency aspect  
1464 can be very, very helpful in helping the President reach his  
1465 goals and objectives, which is okay, we know there are  
1466 important rules and regs out there, we ought to see what the  
1467 job and economic impact of this is. This legislation helps  
1468 do that, and I think it can do it within the structure and  
1469 the budget and the employees and the staffs of the agencies  
1470 we have already.

1471 With that, I yield back my time.

1472 Mr. {Whitfield.} The gentleman yields back his time.

1473 Are there any further--

1474 Mr. {Rush.} Mr. Chairman, I move to strike the last

1475 word.

1476 Mr. {Whitfield.} The gentleman is recognized to speak  
1477 in favor of the amendment.

1478 Mr. {Rush.} Mr. Chairman, this is a commonsense  
1479 amendment. As a matter of fact, Mr. Chairman, I have not in  
1480 my interaction, and since you have been on this committee, I  
1481 have not known the author of this amendment to introduce an  
1482 amendment that wasn't common sense. So this certainly is  
1483 consistent with her aforementioned practice.

1484 Mr. Chairman, the majority introduced a bill to expedite  
1485 drilling in Alaska for shale. The majority introduced a bill  
1486 to expedite the Keystone XL pipeline for TransCanada.  
1487 However, this bill would create more bureaucracy and red tape  
1488 to study jobs and economic impacts of the EPA rules when it  
1489 is already required by law. There is an Executive Order that  
1490 exists already and the Capps amendment would simply ensure  
1491 that rules that are already in the pipeline for years are now  
1492 delayed or otherwise interfered with so they can be  
1493 implemented on time.

1494 The Regulatory Flexibility Act and Small Business  
1495 Regulation Enforcement Fairness Act already require economic  
1496 analysis for every rule and all the agencies comply with  
1497 these rules. So I don't know why we would hear the argument  
1498 and I don't know why the majority would oppose this amendment

1499 because I think it makes sense. We should not create more  
1500 red tape, and I thought that that was the modus operandi and  
1501 that was the meaning and that is what the purpose of what the  
1502 other side was attempting to do, to eliminate red tape, but  
1503 here you are creating more red tape.

1504 Mr. {Whitfield.} The chair recognizes himself to speak  
1505 in opposition to the amendment.

1506 We had a lot of hearings about a lot of these  
1507 regulations and many times EPA testified that they did not  
1508 conduct analysis of the impact of the regulations on jobs and  
1509 they certainly did not look at global competitiveness. I  
1510 think the thing that disturbs me most about the gentlelady  
1511 from California's amendment is that it basically would gut  
1512 out legislation because it provides almost clear autonomy by  
1513 the committee on whether or not to conduct the analysis and  
1514 prepare the report based on if they consider it feasible,  
1515 based on if they feel like the economic modeling is limited,  
1516 based on lack of funding, based on is it going to be useful  
1517 to policymakers and stakeholders and based on that the act  
1518 does not delay or otherwise interfere with the implementation  
1519 of other obligations of those departments or agencies.

1520 So if we adopted this amendment, we may as well not have  
1521 a bill at all. So I would speak very vehemently in  
1522 opposition to the amendment, recognizing all of the good

1523 intentions of the gentlelady who offered it. I would be  
1524 happy to yield.

1525 Mrs. {Capps.} Thank you. Since you have a little time,  
1526 that gives me a chance to respond.

1527 You know, this is really not arguing against the bill,  
1528 this amendment. It is simply talking about what is feasible,  
1529 what is it pragmatically or practically possible to do, and  
1530 being that these are taxpayer dollars in some amount that we  
1531 are going to be using, I would think it would be in their  
1532 interest and which we should be supporting to make sure that  
1533 this is something before it is embarked upon that it is sort  
1534 of a charting and outlining of what is feasible to  
1535 accomplish.

1536 But I also want to speak to, and it is a little about a  
1537 previous amendment. Our colleague from Illinois, Mr.  
1538 Shimkus, says that he is concerned that agencies are not  
1539 looking at cumulative economic impacts. The same could be  
1540 said looking at cumulative health benefits either but the  
1541 majority just rejected an amendment to provide that kind of  
1542 balance.

1543 So, you know, again, it is about balance, it is about  
1544 what is feasible and it is about being willing if we are  
1545 going to look at cumulative effects of economic impact, that  
1546 we also look at cumulative effects of health and

1547 environmental benefits as well, and I yield to either someone  
1548 else or yield back.

1549 Mr. {Whitfield.} Well, it is my time. I think I will  
1550 take it back.

1551 Mrs. {Capps.} It is your time.

1552 Mr. {Whitfield.} I might say, one of the things I like  
1553 about this Sullivan legislation is that it specifically  
1554 directs these departments and agencies to do what Congress  
1555 wants, and frequently, and under your amendment, we would  
1556 once again be allowing the agencies, the departments to do  
1557 what they want to do, to interpret it the way they want to  
1558 interpret it, to determine is it feasible, is it useful.  
1559 This legislation says in our view, it is useful, the  
1560 information is important and we need to know the impact on  
1561 the economy.

1562 So with that, I yield to the gentleman from Colorado.

1563 Mr. {Gardner.} Thank you, Mr. Chairman, and I think it  
1564 is important that if the EPA has discretion and regulators  
1565 have the discretion to do what they think is important, we  
1566 have had witnesses testify exactly what they believe is  
1567 important, and that is to ignore the Executive Order of the  
1568 President that requires the impact on jobs to be considered.  
1569 Assistant Administrator Stanislaus at that table said that  
1570 they do not take into account jobs when they do an economic

1571 analysis.

1572           Mr. {Whitfield.} Correct. I yield to the gentleman  
1573 from Oklahoma.

1574           Mr. {Sullivan.} And when they were asked that too, they  
1575 said that because they didn't have to, and we want them to  
1576 have to do it.

1577           Also, I would just like the gentlelady from California  
1578 to know that cumulative benefits and costs are specified in  
1579 the bill.

1580           Mr. {Whitfield.} Well, I yield back the balance of my  
1581 time. Are there any further amendments to this bill? Well,  
1582 the committee has now concluded its consideration of  
1583 amendments to the TRAIN bill, and when we are prepared to  
1584 vote, we will consider the Sullivan amendment, the Rush  
1585 amendment, the Capps amendment, and final passage.

|

1586 H.R. \_\_\_\_\_

1587           Mr. {Whitfield.} Now the chair at this point will call  
1588 up H.R., and we don't have a number yet, the Jobs and Energy  
1589 Permitting Act of 2011, and ask the clerk to report.

1590           The {Clerk.} Discussion draft H.R. \_\_\_\_\_, to amend the  
1591 Clean Air Act regarding air pollution from Outer Continental  
1592 Shelf activities.

1593           [H.R. \_\_\_\_\_ follows:]

1594 \*\*\*\*\* INSERT 5 \*\*\*\*\*

|  
1595           Mr. {Whitfield.} And without objection, the first  
1596 reading of the bill is dispensed with and the bill will be  
1597 open for amendment at any point.

1598           In keeping with Chairman Upton's policy of giving  
1599 priority to bipartisan amendments, I would like to at this  
1600 point recognize the gentleman from Colorado, Mr. Gardner, to  
1601 offer a set of amendments en bloc, and without objection, the  
1602 clerk will report the amendments.

1603           The {Clerk.} An amendment en bloc offered by Mr.  
1604 Gardner of Colorado.

1605           [The amendments follow:]

1606           \*\*\*\*\* INSERTS 6, 7, 8, 9 \*\*\*\*\*



|  
1607           Mr. {Whitfield.} The gentleman from Colorado is  
1608 recognized for 5 minutes in support of his amendment.

1609           Mr. {Gardner.} Thank you, Mr. Chairman, and my  
1610 colleague from Texas, Mr. Green, and I have an amendment that  
1611 was circulated through the committee and this bill has  
1612 enjoyed not only regular order but a robust and open process  
1613 that has included two legislative hearings over a month of  
1614 debate.

1615           The purpose of a discussion draft is to openly and  
1616 transparently solicit input on a proposal so that we can make  
1617 improvements as legislation moves forward. The purpose of  
1618 our joint amendment is to incorporate the very valuable  
1619 suggestions that we received from both members and  
1620 stakeholders. Most of the changes are technical in nature  
1621 but I think they are very valuable to the bill and make a  
1622 stronger committee product. Others are substantive, and I  
1623 think there are important changes to make.

1624           The first changes are in section 2. Specifically, we  
1625 state that air quality impacts can be measured or modeled as  
1626 appropriate. This change is being made to accommodate  
1627 situations when we do not have instrumentation for  
1628 measurement and we must simply model those impacts. Also in  
1629 section 2, a redundant reference to onshore location is

1630 deleted because the Clean Air Act already defines ``onshore''  
1631 within its terms ``corresponding onshore area.''

1632       The next change is in section 3 where we clarify that if  
1633 the exploration vessel moves away and comes back to the  
1634 drilling area for weather or for other reasons, the vessel is  
1635 not to be treated as a stationary source when it is moving.  
1636 I think that makes sense. EPA shouldn't regulate a vessel  
1637 that is stationary when it is moving. That said, without  
1638 precise clarity, this kind of issue has held up billions of  
1639 barrels of oil in Alaska that could lower the price of  
1640 gasoline over time.

1641       In general, section 4 addresses the permit process. It  
1642 gives a deadline for action, giving energy companies  
1643 certainty and energy markets predictability because, again, 5  
1644 years is simply too long for an agency to sit on the fence.  
1645 And with the American people imploring for relief at the  
1646 pump, we need to simplify the procedure for obtaining these  
1647 air permits, especially for exploration drilling, which is  
1648 temporary in nature.

1649       Section 4 is being amended to limit its scope to  
1650 exploration permits where 6 months is not only reasonable, it  
1651 is imperative if we are to increase our domestic energy  
1652 production and ultimately lower gas prices at the pump. In  
1653 addition, we make clear that the EPA can have a

1654 reconsideration of the permit within the 6-month time frame,  
1655 for example, reconsideration by the Administrator herself.  
1656 However, reconsideration cannot include the Environmental  
1657 Appeals Board, which has been the source of the endless due  
1658 loop ping pong process in the Shell permit case. EAB  
1659 increases litigation because the EAB is litigation and makes  
1660 the path to certainty take longer than the Nation can accord.  
1661 It was always, always the intent of the discussion draft to  
1662 remove the EAB from the process. This amendment makes that  
1663 intent much more clear. After EPA's 6-month deadline, the  
1664 remedy for disagreement is once and for all to go to court,  
1665 no reconsideration, not even for the applicant, no  
1666 administrative stay while the permit is in court.

1667 I ask the members of the committee to support this  
1668 amendment and I would like to yield the balance of my time to  
1669 Mr. Green from Texas to speak on the amendment.

1670 Mr. {Green.} Thank you, Mr. Chairman, and I thank my  
1671 colleague from Colorado for yielding to me and working with  
1672 me on the legislation.

1673 As Mr. Gardner said, this amendment makes several  
1674 technical changes to improve the bill and one important  
1675 clarifying change, it ensures that the legislation reflects  
1676 our intent, which is to limit the expedited review process to  
1677 exploration permits that are temporary and especially time-

1678 sensitive in nature. Our goal and the goal I would hope all  
1679 our colleagues on the committee would charge is to make the  
1680 system work. EPA needs to have a permit approval system in  
1681 place that is predictable, workable and understandable. That  
1682 is why in this legislation we have mirrored the EPA OCS air  
1683 permitting process with the air permitting process employed  
1684 by the Department of Interior in the Gulf of Mexico. By  
1685 doing this, we can rest assured we have a strong offshore air  
1686 permitting process but that these projects are not left in  
1687 limbo like we have seen with the EPA in recent years.

1688 Finally, the Jobs and Energy Permitting Act is just the  
1689 type of legislation our committee should be working on. This  
1690 bill is designed to increase energy production by creating  
1691 the regulatory certainty which our companies desperately need  
1692 to have.

1693 I want to thank Mr. Gardner's staff and the majority's  
1694 staff for working with us on the proposal and ensure it is  
1695 narrowly targeted and tightly crafted. The amendment  
1696 improves the discussion draft, and I would encourage my  
1697 colleagues to support it. I look forward to continued work  
1698 to strengthen the bill and see it advance, and I yield back  
1699 my time, or yield back to my colleague.

1700 Mr. {Whitfield.} Does any one seek recognition in  
1701 opposition to the amendment?

1702 Mr. {Rush.} Mr. Chairman, I move to strike the last  
1703 word.

1704 Mr. {Whitfield.} The gentleman is recognized for 5  
1705 minutes.

1706 Mr. {Rush.} I have no objections to some components of  
1707 this amendment but I have serious concerns about others being  
1708 that the changes in this amendment are technical in nature or  
1709 clarify the intent of the bill's language.

1710 For example, this amendment acknowledges that the  
1711 company applying for an air permit may not be able to measure  
1712 air quality impacts, making modeling of particular impacts  
1713 appropriate and necessary. That makes sense to me. This  
1714 amendment limits the scope of section 4 of the bill to  
1715 exploration permits only. Narrowing the applicability of  
1716 some of the most troubling aspects of this bill is extremely  
1717 helpful but this still leaves a bill that would dramatically  
1718 restrict public participation or exploration permits and  
1719 increase litigation on these very same such permits.

1720 This amendment also explicitly eliminates the most  
1721 effective federal forum for reviewing permit decisions: the  
1722 Environmental Appeals Board. The amendment states that the  
1723 EAB has no authority to review air quality permits for  
1724 offshore exploration. As the EPA testified before this  
1725 committee, it is faster and less burdensome to resolve

1726 disputes over permit decisions before the board rather than  
1727 in court. The board also has extensive technical expertise  
1728 and provides consistency in ruling because it reviews EPA's  
1729 onshore air permit decisions as well.

1730           While I oppose shutting EAB out of the process, I will  
1731 not raise an objection to this amendment as the underlying  
1732 bill also will have effectively eliminated EAB's review by  
1733 leaving no time for such review in the permit process. With  
1734 that, I yield back.

1735           Mr. {Whitfield.} The chair recognizes himself for 5  
1736 minutes in support of the amendment.

1737           I know some people who have been opposed to this  
1738 legislation were making the argument that we basically are  
1739 going to try to eliminate the Environmental Appeals Board and  
1740 all cases at EPA, and while some of us, including myself,  
1741 would support that, I think this amendment of this discussion  
1742 draft that Mr. Green and Mr. Gardner are submitting makes it  
1743 very clear that we are only eliminating the Environmental  
1744 Appeals Board specifically on the exploratory drilling  
1745 permits so that it will remain intact for other permitting  
1746 authorities.

1747           To the gentleman from Colorado, I would be happy to  
1748 yield additional time.

1749           Mr. {Gardner.} Thank you, Mr. Chairman, and I would

1750 also like to point out that there are still ample  
1751 opportunities for the public to comment on these permits, and  
1752 I believe there are four additional comment opportunities  
1753 during the NEPA process associated with the lease sale  
1754 itself. There are comment periods on the permit and so there  
1755 is ample opportunity for public input and discussion. And  
1756 again, when it comes to the EAB itself, anybody who wears  
1757 robes to the hearing and files briefs and arguments, I would  
1758 say that is litigation and so that is what the EAB is doing  
1759 right now. Thank you, Mr. Chairman.

1760 Mr. {Whitfield.} Does anyone else seek recognition to  
1761 speak for or against the--

1762 Mr. {Green.} Mr. Chairman, all we are trying to do,  
1763 though, is to have the same regulatory regimen whether it is  
1764 at the EPA in other parts of the country or the Department of  
1765 Interior in the Gulf of Mexico.

1766 Mr. {Whitfield.} Well, that concludes all debate on  
1767 this. Are there any amendments to this discussion draft?

1768 Mr. {Rush.} Mr. Chairman, I have an amendment at the  
1769 desk.

1770 Mr. {Whitfield.} Will the clerk report the amendment?

1771 The {Clerk.} What is the number, sir?

1772 Mr. {Rush.} It is Rush amendment number 3.

1773 Mr. {Whitfield.} Rush amendment number 3.

1774           The {Clerk.} An amendment to the discussion draft

1775 offered by Mr. Rush.

1776           [The amendment follows:]

1777           \*\*\*\*\* INSERT 10 \*\*\*\*\*



|  
1778 Mr. {Whitfield.} The gentleman is recognized for 5  
1779 minutes to explain his amendment.

1780 Mr. {Rush.} Mr. Chairman, the amendment that I am  
1781 offering today would strengthen the bill by ensuring that we  
1782 maintain an opportunity for community input, even as we seek  
1783 to streamline the permitting process that this bill attempts  
1784 to do.

1785 My amendment will allow the EPA Administrator to provide  
1786 an additional 30-day extension if the Administrator  
1787 determines that such time is necessary to meet the  
1788 requirements of section 4 to provide adequate time for public  
1789 participation or to ensure sufficient involvement by any  
1790 affected State.

1791 Mr. Chairman, input by those most affected by drilling  
1792 is a vitally necessary part of the permitting process. There  
1793 was a time when my colleagues on the other side of the aisle  
1794 valued local community and State rights, and now in this  
1795 bill, as with other bills, bill after bill, my Republican  
1796 friends are doing everything in their power to strip away the  
1797 power of States and local communities to even provide input  
1798 into the decisions that will affect them the most.

1799 Mr. Chairman, as a representative of the people, I do  
1800 not believe that it makes sense for us to legislate away the

1801 ability of our citizens to comment on drilling decisions that  
1802 will impact their health, their livelihoods or their well  
1803 being, and I don't think that our constituents would buy the  
1804 argument put forth by my colleagues on the other side of the  
1805 aisle that we must make it easier for oil companies to drill,  
1806 to take away the public's ability to comment for the public's  
1807 own benefit. This will repeal the Environmental Appeals  
1808 Board, and its original draft would only allow the drilling  
1809 company, not States or average citizens, to seek  
1810 administrative review.

1811         By the way, if my Republican colleagues had seen how  
1812 preposterous this provision sounded and voted to repeal it,  
1813 then I had an amendment drafted that would have done it for  
1814 them. Mr. Chairman, I really believe that it is imperative  
1815 that communities and States have an important role in the  
1816 process of awarding permits and this amendment will ensure  
1817 that adequate time is given for this purpose. I don't  
1818 believe that we should sacrifice the interests of average  
1819 Americans in order to expedite the interests of oil  
1820 companies, and I hope that all of my colleagues on both sides  
1821 of the aisle will support this amendment.

1822         With that, I yield back the balance of my time.

1823         Mr. {Whitfield.} Does anyone seek recognition in  
1824 opposition to the amendment? The gentleman from Colorado.

1825           Mr. {Gardner.} Thank you, Mr. Chairman, and again, the  
1826 purpose of this bill, the purpose of the amendment was to  
1827 make sure that are ending this constant ping pong through the  
1828 EAB back to EPA, back to EAB, and trying to actually move  
1829 forward on job creation and energy security in this country.

1830           The language of the amendment adds a very critical word.  
1831 It says extensions, which is basically 30 days, 30 days, 30  
1832 days, on and on and on, however long they decide to go.  
1833 There is no end time, so this actually takes what could be a  
1834 very productive bill moving forward with construction, moving  
1835 forward with development as soon as Congress intends and turn  
1836 it into an even more infuriating delay of 5, 6 years and  
1837 beyond 30 days at a time.

1838           And so I would urge members to vote no on the amendment  
1839 simply for the reason that when Congress passed the bill in  
1840 the first place, when it passed the Clean Air Act to issue  
1841 these permits, it said look, let us move forward in a year,  
1842 and the EPA has continued to ignore those requirements. This  
1843 is a particularly unique circumstance in Alaska where we are  
1844 dealing with drilling conditions in Alaska. I think we ought  
1845 to get to work right away starting to put people to work,  
1846 starting to achieve energy security, and instead of creating  
1847 an even longer delay period, let us pass the bill as amended  
1848 without this amendment and get America back to work.

1849 Mr. {Whitfield.} Thank you.

1850 Mr. {Gardner.} I yield back my time.

1851 Mr. {Whitfield.} The gentleman yields back his time.

1852 The chair will recognize himself for just one comment in  
1853 opposition to this amendment.

1854 We were talking about the public participation, and I do  
1855 think it is important to recognize that this legislation  
1856 proposed draft does not in any way change the public comment  
1857 periods on EPA-issued air permits for the public at large or  
1858 for States. That is untouched. And in addition to that, the  
1859 public has the opportunity to participate in up to four  
1860 additional comment periods under the NEPA process. So I do  
1861 believe that there is adequate time for public participation  
1862 and do not believe that the discussion draft would deny that  
1863 in any way.

1864 Mr. {Shimkus.} Will the gentleman yield for 1 minute?

1865 Mr. {Whitfield.} Yield to the gentleman from Illinois.

1866 Mr. {Shimkus.} I would just also add that in the  
1867 hearing on this bill, the executive director of the Tribal  
1868 Council testified in support of this bill, and understood  
1869 that there was already multitude of public input given. And  
1870 so I think you can make a credible argument that the local  
1871 folks are very supportive of the direction in which we are  
1872 heading, and I yield back.

1873 Mr. {Whitfield.} I control the time, and I will yield  
1874 back my time.

1875 Does anyone seek recognition in support of the  
1876 gentleman's amendment? Seeing none, at this time I will call  
1877 for a vote on the amendment. Those in favor, say aye. Those  
1878 opposed, nay. In my opinion, I would say the nays have this,  
1879 Mr. Rush. The amendment has been denied.

1880 So at this time are there further amendments to the  
1881 discussion draft?

1882 Mrs. {Capps.} Mr. Chairman, I actually just want to  
1883 announce or say to you, because I do have an amendment at the  
1884 desk but I decided I will wait to bring it up at the full  
1885 committee.

1886 Mr. {Whitfield.} Okay.

1887 Mrs. {Capps.} We will have more members present then.

1888 Mr. {Whitfield.} Well, then I assume--

1889 Mrs. {Capps.} Especially on my side of the aisle.

1890 Mr. {Whitfield.} Are there any additional amendments on  
1891 our side of the aisle? Well, in that case, we have completed  
1892 our--I have been told that Mr. Markey may have an amendment.

1893 Mr. {Rush.} One other amendment, Mr. Chairman.

1894 Mr. {Whitfield.} Oh, no. I can't wait to hear this.

1895 The gentleman from Massachusetts is recognized.

1896 Mr. {Markey.} Thank you, Mr. Chairman, very much.

1897 Thank you for the warm welcome and thank all of you for the  
1898 courtesy of making the amendment. I have an amendment at the  
1899 desk, D10.

1900 Mr. {Whitfield.} The clerk will report the amendment.

1901 The {Clerk.} An amendment to the discussion draft

1902 offered by Mr. Markey.

1903 [The amendment follows:]

1904 \*\*\*\*\* INSERT 11 \*\*\*\*\*

|  
1905           Mr. {Whitfield.} The gentleman is recognized for 5  
1906 minutes to explain his amendment.

1907           Mr. {Markey.} I thank you, Mr. Chairman.

1908           The underlying legislation represents another attempt by  
1909 the Republicans to gut the Clean Air Act. After Shell spent  
1910 years changing its mind about how it wanted to drill and even  
1911 what sea it planned to drill in, the air permit it was  
1912 granted by EPA earned a grade of incomplete from EPA's  
1913 Environmental Appeals Board after it was challenged. Rather  
1914 than showing its work, Shell lobbyists instead essentially  
1915 claimed that the dog ate its homework and requested  
1916 legislative changes to force EPA to grade its air emissions  
1917 on a curve. This bill will exclude as much as 98 percent of  
1918 the air emissions from OCS oil drilling activities from even  
1919 being counted by EPA as part of the permitting process. This  
1920 bill will change the way in which the impacts of emissions  
1921 are measured in a way that guarantees that more toxic  
1922 pollution will be allowed. This bill will require each  
1923 permit application to be graded before EPA has had enough  
1924 time to review it. So air permit applications that would  
1925 have once received a failing grade on the grounds that they  
1926 would endanger health and the environment will now pass with  
1927 flying colors under this new grade inflation scheme.

1928           But what will fail as a result of our ability to curb  
1929 harmful air toxic pollution from drilling activities, this  
1930 legislation exempts the emissions from all drilling support  
1931 vessels, from icebreakers to the drilling ship itself as it  
1932 moves towards the site from counting as part of the air  
1933 permitting process. What that means is that up to 98 percent  
1934 of the total air emissions associated with arctic OCS  
1935 drilling won't even be counted.

1936           Now, at our hearing on this bill 2 weeks ago, Bob Myers,  
1937 who led EPA's Air Office during the Bush Administration,  
1938 pointed out that in fact EPA can and does regulate  
1939 icebreakers and other support vessels under Title II of the  
1940 Clean Air Act. He said that this is why these vessels'  
1941 emissions could be exempted from being counted during the air  
1942 permitting process.

1943           Now, my amendment simply follows up on Mr. Myers'  
1944 observations. It says that any air permit for OCS drilling  
1945 can exempt the emissions from icebreakers or any other oil-  
1946 drilling support vessels as long as those vessels meet the  
1947 most stringent Title II Clean Air Act regulations that are in  
1948 place. It is a simple amendment, and it seems to me that it  
1949 should be easily supported, and I yield back the balance of  
1950 my time.

1951           Mr. {Whitfield.} The gentleman yields back the balance



1952 of his time.

1953 Does anyone seek recognition in opposition to his  
1954 amendment? The gentleman from Colorado.

1955 Mr. {Gardner.} Thank you, Mr. Chairman, and with all  
1956 simple amendments, there is much greater detail to be  
1957 discussed.

1958 Basically what we have here is an amendment that mixes  
1959 and remixes two of the concepts that we are trying to address  
1960 in the bill dealing with both stationary and mobile sources  
1961 by requiring any service ships that do not meet the most  
1962 strict requirements of Title II to be treated as a stationary  
1963 source apply best available control technology and so in  
1964 effect the surface vessels for offshore drilling operations  
1965 are best compared to delivery trucks at a factory, so if  
1966 somebody is taking a truck to a factory or a train that is  
1967 delivering it, in your case, the story used this morning,  
1968 delivering goods to a refinery, power plant or other  
1969 stationary source of emissions, delivery trucks are not  
1970 regulated as stationary sources under the Clean Air Act but  
1971 they are regulated as mobile sources. Similarly, the Clean  
1972 Air Act and EPA regulations don't allow, do not allow marine  
1973 vessels to be regulated as stationary sources but they are  
1974 regulated as mobile sources. Even the Environmental Appeals  
1975 Board agrees on this point.

1976           The other concern that I have in relation to the  
1977 amendment is the effect that it could have on some of our  
1978 international agreements by extending domestic requirements  
1979 to vessels that would otherwise be regulated by United States  
1980 Coast Guard under MARPOL. The United States is an active  
1981 party to MARPOL treaty and works through its procedures in  
1982 our regulation of foreign flag ships. We are working on an  
1983 emissions control area through MARPOL right now that will  
1984 impose additional requirements in certain U.S. waters but  
1985 this could possibly hurt and damage the U.S. efforts by  
1986 possibly inserting the EPA into the regulation of MARPOL-  
1987 regulated vessels and might actually be contrary to our  
1988 obligations as a party.

1989           And so concerns that I have based on significant  
1990 international issues as well as the fact that we are mixing  
1991 stationary and mobile sources, two points that we tried to  
1992 clarify in the bill. Yield back my time.

1993           Mr. {Whitfield.} The gentleman yields back his time.

1994           Does anyone seek recognition? The gentleman from  
1995 Washington State is recognized for 5 minutes.

1996           Mr. {Inslee.} I will speak in favor of the amendment.  
1997 You know, it basically is trying to maintain some degree of  
1998 fair health assessment of these pollutants in the arctic and  
1999 it seems to me since we are destroying the arctic ecosystem

2000 and environment with the use of fossil fuels with their  
2001 associated pollution, it would be a little bit of an irony to  
2002 remove the vestige of protection against pollutants in the  
2003 very place that we are destroying. This is just a small way  
2004 to say we shouldn't go down that road and we shouldn't make  
2005 the arctic a free fire zone for pollution when that is the  
2006 reason it is disappearing.

2007         The arctic ice, according to the scientific community,  
2008 is going to be gone a decade or two in September, which, you  
2009 know, shouldn't bother anyone here except the fact that the  
2010 arctic ice is our air conditioning, and if you want to know  
2011 that means, in about a month or two turn off your air  
2012 conditioning because that is what we are doing with the  
2013 planet right now. We are turning off the thing that  
2014 regulates the earth's temperature, which is the arctic  
2015 icecap, which is going to be gone in a few decades in the  
2016 fall.

2017         Now, I am making this statement. It is a fairly bold  
2018 one. I just wanted to yield to anyone on the Republican side  
2019 who can tell us what is happening to the arctic ice sheet and  
2020 why, if there is an alternative theory as to why the arctic  
2021 ice sheet is disappearing, and an alternative explanation of  
2022 what that is going to do to the climatic system of the  
2023 planet. I would be happy to yield to anyone who has an

2024 explanation.

2025 Mr. {Shimkus.} Would the gentleman yield?

2026 Mr. {Inslee.} Certainly.

2027 Mr. {Shimkus.} I would yield if you would explain how  
2028 the fossil fuels that are under the arctic icecap originally  
2029 got there and what was the climatic conditions that  
2030 encouraged the fossil fuel-like nature to be up there and  
2031 obviously then over the generations decay, overlap and  
2032 develop in very much a different climatic environment than  
2033 there is today.

2034 Mr. {Inslee.} I think as always, Mr. Shimkus's comments  
2035 are very insightful because I think you have led to the exact  
2036 point I am trying to make. If you believe your constituents  
2037 in your great district are happy to say we are going to  
2038 embrace a policy that would allow the earth to end up back in  
2039 the climatic regime that existed during those days, that is  
2040 where we are headed, and I think your point is very well  
2041 taken. We have had hugely dramatic different climates on the  
2042 planet but I can tell you I suspect if you put it to a vote  
2043 in our districts, people are not going to want to say that is  
2044 the climatic system they want to get when you had swamps at  
2045 the North Pole and uninhabitable parts of the regions, ours  
2046 maybe one of them, and that is the problem. That is where we  
2047 are heading. We don't know exactly where it is but it is--

2048 Mr. {Shimkus.} If the gentleman would yield?

2049 Mr. {Inslee.} Sure.

2050 Mr. {Shimkus.} So you do accept the premise that at one  
2051 time there were no icecaps?

2052 Mr. {Inslee.} Yes, I assume that is the case. Plate  
2053 tectonics may explain the presence of some of these previous  
2054 vegetable-rich areas that may have migrated north. I don't  
2055 know my plate tectonics well enough. But I do know the earth  
2056 has had very, very significant different systems, many of  
2057 which would be wholly displeasurable to the way we live, and  
2058 I am suggesting that it is not a wise course for us to cause  
2059 a climate change regime, to remove the arctic icecap with  
2060 unforeseen consequences and then turn around and reduce our  
2061 regulatory system against pollution, and that is what we are  
2062 doing here in this bill.

2063 Mr. Markey's amendment is a very, very small improvement  
2064 to try to prevent that, and I would just say, I think this is  
2065 one of the most interesting discussions we have had since I  
2066 have been on this committee. Yes.

2067 Mr. {Markey.} I thank the gentleman for yielding. I  
2068 just want to get into this vegetation issue in the North Pole  
2069 because I think it is a very important one.

2070 See, the majority is trying to have it both ways. They  
2071 are kind of carnivorous vegetables, you know, a contradiction

2072 in terms. You can't have it both ways. So you can't say on  
2073 the one hand that they don't have to meet the mobile source  
2074 standards for pollution and then say at the same time they  
2075 don't have to meet the stationary standards for pollution.  
2076 It is either one or the other. It is either mobile or it is  
2077 stationary. Pick one because pollution is being created. So  
2078 it is like, you know, carnivorous vegetarian. You can't be  
2079 mobile stationary and be exempted. It is like Salt Lake City  
2080 nightlife. Pick one or pick the other. You can't have both  
2081 at the same time.

2082         So that is your dilemma here right now. You have to  
2083 pick one category because you are exempting them from both,  
2084 and that is essentially why this is going to escalate as the  
2085 debate that we have on the committee.

2086         I thank the gentleman for yielding.

2087         Mr. {Whitfield.} The gentleman's time has expired.

2088         The chair is going to recognize himself for 5 minutes,  
2089 and I want to ask the counsel a couple questions here. This  
2090 amendment does seem to mix up the concepts of stationary and  
2091 mobile sources under the Clean Air Act, and just for  
2092 clarification, these support vessels that are providing  
2093 support to platforms, are the emissions considered as a part  
2094 of the stationary platform emissions?

2095         {Counsel.} Yes, they are. Their emissions count

2096 towards the emissions of the OCS source so they are regulated  
2097 as part of the OCS source in that way.

2098 Mr. {Whitfield.} Okay. So they are included?

2099 {Counsel.} Yes.

2100 Mr. {Whitfield.} But this amendment would in essence  
2101 treat the vessels as stationary sources?

2102 {Counsel.} Yes, unless the vessel met the strictest  
2103 requirements under Title II, then they would be required to  
2104 be regulated as a stationary source.

2105 Mr. {Whitfield.} And so they would come under the  
2106 prevention of significant deterioration?

2107 {Counsel.} Yes, sir, that is correct.

2108 Mr. {Whitfield.} Okay.

2109 Mr. {Shimkus.} Will the gentleman yield?

2110 Mr. {Whitfield.} Yes, I will yield to the gentleman.

2111 Mr. {Shimkus.} And it is also my understanding that my  
2112 colleague from Massachusetts is very sneaky in that he is  
2113 changing the language for any versus under Title II only new  
2114 vessels so that any vessel would then have to meet these more  
2115 stringent standards versus what was the intent of the law,  
2116 which was new.

2117 {Counsel.} That is correct. Title II generally has a  
2118 policy for new vessels, especially oceangoing vessels, and  
2119 this would require presumably for those vessels that are

2120 older, they would have to meet this. Otherwise they wouldn't  
2121 be able to service OCS sources, so that is correct.

2122 Mr. {Shimkus.} I yield back my time.

2123 Mr. {Barton.} Mr. Chairman, would you yield to me also?

2124 Mr. {Whitfield.} Yes, I yield to the gentleman.

2125 Mr. {Barton.} How many stationary drilling platforms  
2126 and mobile source service vehicles do we expect to be in this  
2127 area if this bill becomes law?

2128 {Counsel.} Well, there is one--for the Alaska OCS and  
2129 the current Shell program, it is one drilling vessel and they  
2130 are seeking--

2131 Mr. {Barton.} One, not 100, not 1,000?

2132 Ms. {Counsel.} No, one.

2133 Mr. {Barton.} One?

2134 {Counsel.} One.

2135 Mr. {Barton.} And how many service vessels would serve  
2136 that one?

2137 Ms. {Counsel.} There is one primary one, the  
2138 icebreaker, and then there are a few additional ones.

2139 Mr. {Barton.} A few?

2140 {Counsel.} Right.

2141 Mr. {Barton.} ``A few'' is a small number.

2142 {Counsel.} Yes.

2143 Mr. {Barton.} So one platform, a handful of vessels and



2144 my friends on the other side say that is going to upset the  
2145 climate balance and the environment in the Arctic Ocean. How  
2146 many cars go through the Boston Tunnel every day?

2147 {Counsel.} Mr. Markey might be able to answer that one  
2148 better. I am not exactly sure.

2149 Mr. {Barton.} Would it be several thousand?

2150 {Counsel.} It would be many.

2151 Mr. {Barton.} Many?

2152 {Counsel.} Many.

2153 Mr. {Barton.} I will postulate that there is more  
2154 potential, and I am not saying there is because I know all  
2155 those folks that drive back and forth through the Boston  
2156 Tunnel probably all drive electric vehicles and don't consume  
2157 gasoline, but the potential for environmental emissions is  
2158 probably greater in Mr. Markey's district on a daily basis  
2159 than it is on a decade basis in the arctic if we pass this  
2160 bill.

2161 Ms. {Counsel.} Well, yes, and obviously also for  
2162 exploration permits, it is important to keep in mind that the  
2163 activity is 30 to 45 days, so it is not even over years in  
2164 the arctic, it is very limited duration.

2165 Mr. {Barton.} But I do not think Mr. Markey is sneaky.  
2166 I think he is up front. I think he is providing a service to  
2167 this committee by putting this amendment in so that we can

2168 debate it, and he is a paragon of legislative accomplishment.

2169           And with that, I yield back to the chairman.

2170           Mr. {Whitfield.} Thank you, Mr. Barton.

2171           Does anyone else seek recognition to speak for or  
2172 against the Markey amendment? Seeing no one seeking  
2173 recognition, at this time we will vote on the Markey  
2174 amendment. For those in favor, say aye. Those opposed, no.  
2175 In the opinion of the chair, the no's have it and the Markey  
2176 amendment is defeated.

2177           Are there further amendments? If there are no further  
2178 amendments, the question now occurs on favorably reporting  
2179 the bill as amended, the discussion draft as amended. All  
2180 those in favor shall signify by saying aye. All those  
2181 opposed, no. The ayes have it, and the bill is favorably  
2182 reported.

2183           We will now move back to the consideration of the TRAIN  
2184 bill to dispose of amendments. To refresh everyone's memory,  
2185 we had three amendments after we came back. There was the  
2186 Sullivan amendment, the Rush amendment and the Capps  
2187 amendment. So first we will vote on the Sullivan amendment,  
2188 which was striking section 5 of the bill. That is the \$2  
2189 million authorization. All those in favor, say aye. Those  
2190 opposed, no. In the opinion of the chair, the ayes have it.

2191           We will now consider the Rush amendment. All those in

2192 favor, say aye. Those opposed, no. In the opinion of the  
2193 chair, the no's have it and the amendment is not agreed to.

2194 We will now consider the Capps amendment. All those in  
2195 favor, say aye. Those opposed, no. The no's have it and the  
2196 amendment is not agreed to.

2197 We will now vote on favorably reporting the bill to the  
2198 full committee as amended. All those in favor, say aye.  
2199 Those opposed, no. The ayes have it, and the bill is  
2200 favorably reported to the full committee.

2201 Without objection, staff is authorized to make technical  
2202 and conforming changes to the bill approved by the  
2203 subcommittee today. Hearing no objection, so ordered.

2204 The chair thanks all the members and the staff, and the  
2205 subcommittee stands adjourned subject to the call of the  
2206 chair.

2207 [Whereupon, at 1:53 p.m., the Subcommittee was  
2208 adjourned.]