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4 MARKUP ON

5 H.R. 2681, THE ``CEMENT SECTOR REGULATORY RELIEF ACT OF

6 2011''; AND

7 H.R. 2250, THE ``EPA REGULATORY RELIEF ACT OF 2011''

8 TUESDAY, SEPTEMBER 13, 2011

9 House of Representatives,

10 Subcommittee on Energy and Power

11 Committee on Energy and Commerce

12 Washington, D.C.

13 The subcommittee met, pursuant to call, at 10:13 a.m.,  
14 in Room 2123 of the Rayburn House Office Building, Hon. Ed  
15 Whitfield (Chairman of the Subcommittee) presiding.

16 Members present: Representatives Whitfield, Sullivan,  
17 Shimkus, Walden, Terry, Burgess, Bilbray, Scalise, McMorris  
18 Rodgers, Olson, McKinley, Gardner, Pompeo, Griffith, Barton,

19 Upton (ex officio), Rush, Inslee, Castor, Markey, Engel,  
20 Green, Doyle and Waxman (ex officio).

21       Staff present: Maryam Brown, Chief Counsel, Energy and  
22 Power; Allison Busbee, Legislative Clerk; Andy Duberstein,  
23 Special Assistant to Chairman Upton; Cory Hicks, Policy  
24 Coordinator, Energy and Power; Peter Kielty, Senior  
25 Legislative Analyst; Heidi King, Chief Economist; Jeff  
26 Mortier, Professional Staff Member; Mary Neumayr, Counsel,  
27 Oversight/Energy; Phil Barnett, Democratic Staff Director;  
28 Jen Berenholz, Democratic Chief Clerk; Alison Cassady,  
29 Democratic Professional Staff Member; Greg Dotson, Democratic  
30 Energy and Environment Staff Director; Caitlin Haberman,  
31 Democratic Policy Analyst; Elizabeth Letter, Democratic  
32 Assistant Press Secretary; Karen Lightfoot, Democratic  
33 Communications Director, and Senior Policy Advisor; and  
34 Alexandra Teitz, Democratic Senior Counsel, Environment and  
35 Energy.

|  
36           Mr. {Whitfield.} Good morning. The subcommittee will  
37 now come to order, and we are going to give our opening  
38 statements, and at this time I would like to recognize the  
39 chairman of the full committee for his opening statement, Mr.  
40 Upton.

41           The {Chairman.} Well, thank you, Mr. Chairman. I  
42 appreciate allowing me to go out of turn, but I do appreciate  
43 this hearing today. It is very important.

44           And dating back to my days at OMB under President  
45 Reagan, I have always been very deeply concerned about the  
46 harm that can come from excessive federal regulations, and  
47 with each passing day that unemployment remains above 9  
48 percent, we see the EPA's unprecedented regulatory burden  
49 causing genuine hardships for the American people, and as the  
50 saying goes, you can't work in a factory that never gets  
51 built.

52           Because of the economic damage that comes from some such  
53 ill-advised regs, President Obama himself recently decided to  
54 withdraw EPA's proposal to revisit the ozone rule. That  
55 single proposal had the potential to be the most expensive  
56 environmental reg in history, and I am pleased to see it  
57 taken off the table. However, we have to recognize that  
58 there are many other proposed and recently finalized regs

59 that also pose a real threat to jobs and the economy,  
60 certainly in my State of Michigan and all across the country.

61 Today we are going to address two sets of reg, those  
62 impacting the cement industry and those affecting boilers  
63 used in manufacturing, commercial, and institutional  
64 settings. These regs pose a real clear and present danger to  
65 job creation, which is why the two bills under consideration  
66 today, the Cement Sector Regulatory Relief Act and the EPA  
67 Regulatory Relief Act, need to become law.'

68 Let me give one example of how these regs as they are  
69 currently conceived are directly undermining the shared goal  
70 of job creation. President Obama signed a massive stimulus  
71 bill at the beginning of his term, and much of which was  
72 directed toward major infrastructure projects, and he  
73 continues to advocate for building roads and bridges to spur  
74 hiring, it takes cement, I would note, to make that  
75 infrastructure, yet EPA's original cement MACT proposal  
76 imposed an unprecedented regulatory burden on the industry.

77 Even EPA admitted that the original cement rules would  
78 have caused plant shutdowns and raised the cost of cement.  
79 In other words, it would have been a boon to the Chinese and  
80 Mexican and other cement industries, not here in the United  
81 States, but a real drag at home. So given the importance of  
82 cement in the economic recovery, this is clearly not the way

83 we should be treating an industry and a product so vital to  
84 any turnaround.

85         These bills are about a commonsense, pro-jobs approach  
86 to regulations. They simply require EPA to promulgate cement  
87 plant and boiler regs that reduce emissions using reasonable  
88 and achievable targets and timetables. It is no surprise  
89 that both of these bills do enjoy bipartisan support. I look  
90 forward to their approval by the subcommittee today, and I  
91 yield back my time.

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

93         \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
94 Mr. {Whitfield.} Thank you, Mr. Upton.

95 At this time I recognize the gentleman from Texas for a  
96 3-minute opening statement.

97 Mr. {Green.} Thank you, Mr. Chairman, for holding the  
98 markup today.

99 We have two bills before us, H.R. 2250, the EPA  
100 Regulatory Relief Act of 2011, and H.R. 2681, the Cement  
101 Sector Regulatory Relief Act of 2011. I have concerns with  
102 both bills, and I hope my colleagues agree they need to be  
103 changed before the bills are approved by the full committee.

104 My first concern with both of these bills is the  
105 possibility of indefinite delay in the rules. The EPA says  
106 they can finish the boiler MACT rules by next spring so the  
107 15-month, at minimum, delay seems unnecessary to me. If we  
108 are trying to give our companies regulatory certainty, how we  
109 are we helping by not setting a date that they can then  
110 expect the rules to be issued? How are they supposed to plan  
111 for years in advance?

112 I am also concerned with the bill's requirement that EPA  
113 select the least burdensome of the range of regulatory  
114 alternatives even if more a stringent standard is feasible  
115 and economically viable and provides greater public health  
116 protection. I don't want the companies in my district to go

117 out of business or move production so I want to ensure they  
118 can meet whatever standards are issued. If a more stringent  
119 standard is shown to be feasible and economically viable,  
120 then according to the Clean Air Act, that is the standard  
121 that should be required. This is how we have cleaned up our  
122 air over the last several decades and protected public  
123 health.

124 Thank you, Mr. Chairman. I hope we can address these  
125 concerns before our full committee markup, and I yield back.

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

127 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
128 Mr. {Whitfield.} Thank you.

129 I will recognize myself now for an opening statement.

130 Today, we will mark up two important bills, H.R. 2681,  
131 the Cement Sector Regulatory Relief Act, and H.R. 2250, the  
132 EPA Regulatory Relief Act, which I will refer to as the  
133 cement and boiler bills, respectively. I would like to thank  
134 my colleague Mr. Sullivan for sponsoring the cement bill, and  
135 Mr. Griffith for sponsoring the boiler bill. I would also  
136 like to thank Mr. Ross of Arkansas and Mr. Butterfield of  
137 North Carolina of the full committee for their sponsorship of  
138 these bipartisan bills.

139 Neither the cement nor the boiler bill was part of the  
140 President's jobs speech last week, but should have been, as  
141 these bills clear away impediments and obstacles to job  
142 creation. The President did express his support for  
143 infrastructure projects as a source of jobs and a means to  
144 jump-start the economy. What he did not say was that the  
145 main component of those roads, bridges, tunnels, buildings  
146 and other infrastructure projects is cement.

147 It makes little sense for the Administration to  
148 encourage infrastructure on the one hand, while saddling the  
149 cement industry with costly regulations on the other. But  
150 this is exactly what the EPA's original cement MACT rules

151 would have done. Even EPA admitted that its proposal would  
152 have led to the closure of several facilities and would have  
153 raised the cost of the cement used in construction and would  
154 have increased the amount of cement imported into the United  
155 States. The cement industry itself predicted that up to 20  
156 percent of domestic production would have shut its doors in  
157 favor of these imports from countries that do not impose such  
158 costly regulations on their cement producers.

159 To its credit, EPA has recognized that its initial  
160 proposal was technologically and economically unrealistic,  
161 and has decided to reconsider it. However, this process is  
162 fraught with uncertainty whether it will provide the relief  
163 needed by domestic cement producers. In order to end this  
164 chilling effect, we need to pass the cement bill.

165 This modest bill does nothing more than what EPA should  
166 have done all along. It requires the agency to set new  
167 emission limits from cement plants that are reasonable and  
168 achievable, and I am convinced that we can do so in a manner  
169 that avoids serious economic damages, and this bill would put  
170 us on the track to accomplish precisely that.

171 The story with the boiler bill is much the same, but the  
172 threat to jobs is even greater because these rules would  
173 apply to a wide variety of establishments, not just  
174 manufacturers, but also colleges, universities, hospitals,

175 municipal buildings and commercial properties. Approximately  
176 200,000 boilers would have been affected by these costly  
177 rules. Not only would they have adversely impacted job  
178 creation, but they would also hurt consumers in the form of  
179 higher costs for manufactured goods as well as things like  
180 medical bills, tuition and rent.

181         The impact on higher education was particularly  
182 noteworthy. At hearings, we have learned from  
183 representatives of Purdue University and Notre Dame  
184 University what these rules would do to them. Both  
185 institutions fear multimillion dollar-compliance costs at a  
186 time when their budgets are already under strain and tuition  
187 hikes are the last thing families can afford at this time.

188         As with the cement rule, the EPA is currently  
189 reconsidering the boiler rules, but the agency acting on its  
190 own is not likely to fix the problem. The boiler bill  
191 requires EPA to re-propose its boiler rules so as to be both  
192 technologically achievable and economically viable.

193         Both these bills restore the balance between our  
194 Nation's economic goals of job creation and protecting the  
195 health and environment of our country, and I would urge every  
196 member to support both of these bills.

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

198 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
199           Mr. {Whitfield.} At this time I would like to recognize  
200 for an opening statement the gentleman from Illinois, Mr.  
201 Rush, for 5 minutes.

202           Mr. {Rush.} I want to thank you, Mr. Chairman, and  
203 today we are marking up two bills, H.R. 2250, the so-called  
204 EPA Regulatory Relief Act of 2011, and H.R. 2681, the Cement  
205 Sector Regulatory Relief Act of 2011.

206           Mr. Chairman, unfortunately, when the minority staff  
207 tried to reach out to the majority side to see if we could  
208 work together and come up with a bill that both sides could  
209 fully support, those efforts were shamefully rebuffed.

210           As these bills are written, I cannot support either H.R.  
211 2250 or H.R. 2681, because, in the words of Assistant  
212 Administrator Gina McCarthy in the subcommittee hearing last  
213 week, these bills, and I quote, ``would be a direct attack at  
214 the core of the Clean Air Act.''

215           Currently drafted, these bills would indefinitely delay  
216 the deadline for when the EPA would need to act on the rules.  
217 Additionally, the language in Section 5 requires the EPA to  
218 select the ``least burdensome'' of the range of regulatory  
219 alternatives, even if a more stringent standard is feasible,  
220 economically viable, and would provide greater public health  
221 protection. Whether intentionally or not, this provision

222 raises legal uncertainty, since the industry could then argue  
223 before the courts that this new language should modify or  
224 supersede provisions of the Clean Air Act designed to achieve  
225 maximum reductions in toxic air pollution.

226         Ranking Member Waxman and I both showed interest in  
227 trying to hammer out an appropriate compromise with the  
228 majority that would address industry concerns while also  
229 providing public health and environmental protections. Since  
230 these efforts were rejected, I am compelled to oppose both  
231 H.R. 2250 and H.R. 2268 and I ask my colleagues to oppose  
232 them as well.

233         As I stated in last week's hearing, I believe that  
234 protecting the public health should be the absolute top  
235 priority of this Congress, but I also believe that we should  
236 work hard and must work hard to find the appropriate balance  
237 and establish an environment where industry can also succeed  
238 and industry can flourish, and I don't subscribe to the  
239 belief that we are only capable of doing one or the other.

240         While I realize that not all of my colleagues believe in  
241 the merits of science, the experts and the research tell us  
242 that we must protect the public health from the toxic air  
243 pollutants that are generated from 200,000-plus industrial,  
244 commercial and institutional boilers across the country.

245         Mr. Chairman, the research also tells us that low-income

246 families and minorities are disproportionately affected by  
247 toxic air pollution because they are more likely to live  
248 closer to these industrial facilities. The hazardous air  
249 pollutants emitted from these boilers, including mercury and  
250 other harmful toxins, can impair brain development,  
251 neurological function and the ability to learn, as well as  
252 potentially cause cancer. These toxins can also lead to  
253 respiratory and cardiovascular disease by damaging the  
254 kidneys, damaging the lungs and damaging the nervous system.

255 Mr. Chairman, this is what science tells us, and just  
256 because we might not like what the science says does not mean  
257 that we should disregard scientific facts, evidence and  
258 conclusions.

259 So, Mr. Chairman, you leave me with no other choice but  
260 to oppose H.R. 2250 and 2681 and I indeed urge all of my  
261 colleagues to oppose them as well.

262 I thank you, and with that I yield back the balance of  
263 my time.

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

265 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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

267 At this time I would like to recognize the chairman  
268 emeritus, Mr. Barton of Texas, for a 5-minute opening  
269 statement.

270 Mr. {Barton.} Thank you, Mr. Chairman, and thank you  
271 and Ranking Member Rush for scheduling this markup. It is  
272 good to go through regular order and give everybody on the  
273 committee an opportunity to review these bills and offer  
274 amendments at subcommittee and then later at full committee.

275 I am going to focus most of my remarks on the Cement  
276 Sector Regulatory Relief Act, although I am in strong support  
277 of H.R. 2250, the EPA Regulatory Relief Act of 2011.

278 Mr. Chairman, I have three cement plants in my  
279 Congressional district near a small town in Ellis County  
280 called Midlothian, Texas. They represent a cross-section of  
281 the cement industry, I would say in the world, actually. One  
282 plant is locally owned, one plant is owned by a national  
283 corporation and one plant is owned by an international  
284 corporation. Collectively, these three plants employ  
285 directly over a thousand men and women. They have provided  
286 not all but I would say 60 to 70 percent of the cement that  
287 has been used to build the north Texas region over the last  
288 30 years, which is one--or 40 or 50 years--which is one of

289 the most economically robust regions not just of Texas but of  
290 our country.

291 The proposed cement regulations, if implemented on the  
292 timetable as proposed, will probably shut down at least one  
293 and maybe two of those plants. They will certainly restrict  
294 the output for no good purpose, so far as I can tell, Mr.  
295 Chairman. I don't know if everybody has this in their  
296 packet, but this is a chart of cement consumption in the  
297 United States from 1975 and it is extrapolated out to 2030,  
298 and if you can see right here this huge just absolute drop,  
299 we have lost somewhere between 40 and 50 percent of our  
300 market since it looks like about 2005, maybe 2006. If we  
301 lost 40 to 50 percent of our votes, Mr. Chairman, we wouldn't  
302 be here. Somebody else would be sitting in these seats up  
303 here on the dais. This rule, if implemented in the timeframe  
304 and in the manner it is proposed, will cost more next year  
305 than the entire profits of the industry in the United States,  
306 the entire profits.

307 Now, this is an industry that has lost 40 percent of its  
308 sales. You know, some companies are doing a little better,  
309 some companies doing a little bit worse, and if we what the  
310 EPA wants to do on the cement industry, they have to spend  
311 more than they actually have in profits. That is ridiculous,  
312 given the fact that ambient air quality in the United States

313 is going up, it is improving. If we walk outside right now,  
314 the sky is blue, the air is good, and there is a power plant  
315 less than two blocks from this building. There is a major  
316 thoroughfare, Independence Avenue, half a block from this  
317 room. American technology and American industry and the  
318 American people are doing a good job on air quality, Mr.  
319 Chairman, and we have an EPA that appears, you know,  
320 absolutely determined to drive our economy into the ground  
321 for some theoretical benefit in terms of preventable  
322 premature deaths, most of which come from an assumption that  
323 you reduce the particulate matter in the PM-2.5, which most  
324 of us in Texas call it dust, and you will have better health.

325         So the Cement Regulatory Relief Act, Mr. Chairman, does  
326 not gut the Clean Air Act. It gives the industry more time  
327 to comply. It asks the EPA to go back and look at the rule.  
328 And in Section 5 of the proposed act before us, it says let  
329 us make sure that whatever rule we propose can be  
330 implemented. What a novel idea that we actually try to  
331 propose rules that industry can implement and do so in a  
332 consistent fashion and stay in business. If we are really  
333 about saving jobs, Mr. Chairman, then we ought to pass this  
334 bill and send it to full committee.

335         And with that, I yield back.

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

337 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
338 Mr. {Barton.} Thank you, Mr. Barton.

339 Mr. Doyle, would you like to make an opening statement?

340 Mr. {Doyle.} Yes. I will be brief, Mr. Chairman.

341 Mr. {Whitfield.} The gentleman is recognized for 3  
342 minutes.

343 Mr. {Doyle.} Mr. Chairman, I won't be voting for either  
344 of these bills today, and I think both of them as they are  
345 currently written have no chance of passing in the Senate, so  
346 the result is nothing gets done.

347 I think there are problems with these rules and I don't  
348 have any problem at all with the section of the bill that  
349 gives 15 months to re-propose these rules. I think that  
350 industry has some legitimate concerns with the rules and I  
351 think we ought to sit down and try to work those things out.  
352 The thing that I can't support is this compliance timeline of  
353 5 years to infinity. It seems to me that there is no  
354 guarantee that these rules once they are worked out would  
355 ever be complied with. I don't think that is a bill that is  
356 going to clear the Senate and we will be right back to square  
357 one.

358 So my hope is that we can work together from  
359 subcommittee to full committee and perhaps come back with a  
360 vehicle that allows industry to address some of the

361 legitimate concerns they have with EPA on these proposed  
362 rules and then once that is done, set some sort of a  
363 definitive timeline for compliance that makes sense also. I  
364 think if we can do that, then you have a chance of getting a  
365 bill that not only would have bipartisan support here in the  
366 House but could also perhaps clear the Senate. I am open to  
367 working with all members of this committee and the  
368 subcommittee between now and full committee to try to do  
369 that.

370 Thank you, Mr. Chairman.

371 [The prepared statement of Mr. Doyle follows:]

372 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
373 Mr. {Whitfield.} Thank you.

374 The gentleman from Illinois, Mr. Shimkus, is recognized  
375 for 3 minutes.

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

377 Just in a quick response to my friend from Pennsylvania,  
378 the boiler MACT bill is almost identical to a bipartisan bill  
379 on the Senate side by Wyden and Collins, and so I would be  
380 more optimistic than pessimistic on the boiler MACT just  
381 because of that bipartisan support on that side.

382 And I just want to reiterate what Chairman Emeritus  
383 Barton said on the--wouldn't it be unique that we actually  
384 proposed rules that we know the industry could meet? Both of  
385 these bills ask for us to consider rules that are achievable  
386 by real-world boilers or achievable by cement manufacturing.  
387 How unique. Figure out something that industry could  
388 actually do because if they can't do it--I have a huge cement  
389 facility. I have been told what they will do. They will  
390 move. They will just disassemble it. They will ship it to  
391 China and then they will ship cement back if we push for  
392 rules that industry cannot do, and that is the real world.

393 The President talked about jobs. These are two great  
394 examples of easing the regulatory burden so we can keep and  
395 maintain and grow good-paying jobs in America. He also

396 states his concern about undue burdensome regulations. Well,  
397 these are example A and example B of undue burdensome  
398 regulations. And it also complies with his own Executive  
399 Order, the President's Executive Order 13563.

400       So for all those reasons, we ought to be doing this. I  
401 applaud the two sponsors of this legislation. I look forward  
402 to quickly passing it through the subcommittee and then doing  
403 so in full committee, and I yield back my time.

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

405 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
406 Mr. {Whitfield.} Thank you.

407 Mr. Terry, you are recognized for 3 minutes for an  
408 opening statement.

409 Mr. {Terry.} Thank you, Mr. Chairman, and Mr. Doyle, a  
410 good friend, but boy, I will tell you, if we are going to  
411 base our work off of the lack of productivity in the Senate,  
412 we might as well just go home.

413 In news on CNN this morning, the discussion was 15.1  
414 percent poverty rate, six points over the unemployment rate.  
415 So what we are seeing is, there is a number of unemployed  
416 that aren't being counted or they have an extremely low-  
417 paying job.

418 Mr. Shimkus, I too have a cement factory, an Ash Grove  
419 facility literally just yards outside of my district but in  
420 Jeff Fortenberry's but I was recently on the property, and  
421 they employ well over 100 people in the district. The cement  
422 MACT, the EPA has already said that they expect 20 percent of  
423 those plants to go out of business. This is probably going  
424 to be one of them. So that is more people that we put into  
425 poverty by government regulation and policy, take away jobs.

426 But probably the most ironic impact of cement MACT in  
427 particular is the President's speech the other night where he  
428 challenged our side of the aisle in particular on

429 infrastructure, and I appreciate that. We need more  
430 interstates and repair our interstates and repair our  
431 bridges. Infrastructure is a role of federal government. It  
432 is in article I, section 8. It is a responsibility. The  
433 irony here is it calls for more concrete to be used, you shut  
434 down the facilities that are the key ingredient, which is  
435 cement, forcing us to have to look overseas if we are going  
436 to do what the President wants. So we put in a stimulus  
437 provision where we are going to stimulate job growth in China  
438 to import the infrastructure to us to use. It doesn't make  
439 sense to me.

440       So we aren't talking about rolling back. What we are  
441 trying to do is block an impossible rule, a new rule, an  
442 additional rule that moves the goal line to a point that they  
443 can't make. It is maximum achievable control technology, not  
444 industry standard but a pipe dream, and that is what we are  
445 fighting against today is saving those jobs.

446       I yield back.

447       [The prepared statement of Mr. Terry follows:]

448 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
449 Mr. {Whitfield.} Thank you. Does the gentleman from  
450 Massachusetts seek to make an opening statement?

451 Mr. {Markey.} Thank you, Mr. Chairman.

452 Mr. {Whitfield.} The gentleman is recognized for 3  
453 minutes.

454 Mr. {Markey.} Thank you, Mr. Chairman.

455 These bills represent a toxic assault on public health  
456 for the benefit of corporate polluters and amount to yet  
457 another gag order on the EPA. They are part of Republican  
458 efforts to deny the science, delay the regulations and deter  
459 efforts to protect the health of millions of Americans.

460 Some might say that Republicans just don't want  
461 regulatory decisions to be made. After all, these  
462 regulations to reduce hazardous air pollutants are already 10  
463 years overdue and these bills would allow EPA to postpone  
464 them indefinitely. But it turns out that Republican  
465 sometimes want to speed up the bureaucrat rules. Republicans  
466 voted to tell EPA to hurry up and make decisions to issue air  
467 permits for drilling rigs off the coast of Alaska.

468 Republicans have also voted to give the Department of the  
469 Interior just 30 days after receiving a permit application to  
470 reach a regulatory decision on drilling in the Gulf, and they  
471 have also voted to reduce the time allowed for environmental

472 review so that the State Department would approve the  
473 Keystone Pipeline as soon as possible, and we hear frequently  
474 that the nuclear renaissance could transform from fantasy to  
475 reality if the Nuclear Regulatory Commission just sped up its  
476 nuclear regulatory review.

477         But when it comes to regulations that would decrease the  
478 amount of toxic pollutants in our air or our water,  
479 apparently these same agencies just need more time to figure  
480 out how to clean it up, more time to review the science, more  
481 time to understand the technologies, more time before doing  
482 anything to make our water safer to drink, make our air safer  
483 to breathe and protect the health of children around the  
484 country.

485         In the case of the bills being considered today, this is  
486 an indefinite postponement on top of the already decades-long  
487 delay since these regulations were supposed to be finalized  
488 long ago. For 10 long years, industry knew that these rules  
489 were overdue. It is all part of an effort to transform EPA  
490 into a see no pollution, hear no pollution, speak no  
491 pollution agency.

492         EPA's final mercury and air toxic standards for cement  
493 plants alone are estimated to save as many as 2,500 lives  
494 every year. The standards also will prevent up to 17,000  
495 cases of aggravated asthma, 1,500 heart attacks, 32,000 cases

496 of upper and lower respiratory symptoms, and 130,000 days of  
497 lost work annually by the year 2013. When you combine the  
498 benefits of the cement rule with the benefits of the boiler  
499 rule, the enormous public health benefits are undeniable. If  
500 these standards were to be delayed by even a single year, the  
501 potential magnitude of extreme health consequences would  
502 include 9,000 premature deaths, 58,000 asthma attacks, 5,500  
503 heart attacks and 6,000 hospital admissions and emergency  
504 room visits.

505           These bills are both unnecessary and unwise. I urge a  
506 no vote. Thank you, Mr. Chairman.

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

508 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
509 Mr. {Whitfield.} At this time I will recognize the vice  
510 chairman of the subcommittee, Mr. Sullivan, for 3 minutes for  
511 his opening statement.

512 Mr. {Sullivan.} Thank you, Chairman Whitfield. Thank  
513 you for holding this important subcommittee markup today.

514 Both the EPA Regulatory Relief Act and the Cement Sector  
515 Regulatory Relief Act of 2011 seek to do what we need most,  
516 and that is to put a stop to the overly burdensome  
517 regulations that destroy jobs. Instead of a command and  
518 control approach from EPA on environmental regulations, these  
519 bipartisan bills will force EPA to rewrite these burdensome  
520 rules so they are both technically and economically  
521 achievable while protecting American jobs.

522 Specifically, I introduced the bipartisan cement MACT  
523 legislation with my good friend and colleague, Mike Ross, to  
524 prevent U.S. cement plant shutdowns which will directly  
525 result in job losses. The President recently submitted a  
526 jobs plan to Congress, and I want to be clear: this bill is  
527 about jobs and he should support it. If the EPA's cement  
528 MACT rule is not revised, thousands of jobs will be lost due  
529 to the cement plant closures and inflated construction costs.

530 This rule also threatens to shut down 20 percent of the  
531 Nation's cement manufacturing plants in the next 2 years,

532 sending thousands of jobs permanently overseas and driving up  
533 cement and construction costs across the country. Cement is  
534 the backbone for the construction of our Nation's buildings,  
535 roads, bridges, tunnels and critical water and wastewater  
536 treatment infrastructure.

537 My legislation has wide bipartisan and industry support  
538 from the U.S. Chamber of Commerce, the National Association  
539 of Manufacturers as well as the International Brotherhood of  
540 Boilermakers, iron ship builders, blacksmith forgers and  
541 helpers.

542 Mr. Chairman, these EPA cement and boiler regulations  
543 negatively affect business and job creation in every  
544 community. These two rules will cost our Nation billions,  
545 impacting everything from energy reliability, jobs,  
546 manufacturing and the global economic competitiveness of the  
547 United States. The boiler MACT rule alone has the potential  
548 to put 224,000 jobs at risk while costing \$2.3 billion  
549 annually to our economy.

550 For both of these bills, our goal is to ensure effective  
551 regulations that protect communities both environmentally and  
552 economically while protecting jobs. With the Nation's  
553 unemployment rate above 9 percent, the time is now to pass  
554 these bills, and I look forward to working with my colleagues  
555 to bring them to the House Floor.

556 I yield back my time.

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

558 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
559 Mr. {Whitfield.} Thank you, Mr. Sullivan.

560 At this time I recognize the gentleman from Texas, Dr.  
561 Burgess, for 3 minutes for his opening statement.

562 Mr. {Burgess.} I thank the chairman for the  
563 recognition.

564 You know, President Obama acknowledged at the beginning  
565 of this month that the EPA kills jobs. He demanded that Lisa  
566 Jackson revoke her extreme new ozone standards rule. So the  
567 President is now on the same page with House Republicans.  
568 This EPA is out of control. This EPA is the largest  
569 contributor to economic uncertainty in the federal  
570 government. This President finally got it right. This EPA  
571 kills jobs and its policies need to be contained.

572 The legislation we are reviewing today doesn't even go  
573 that far. These two bills simply return to the agency for  
574 consideration the collection of rules that economists and  
575 scientists have told us will kill jobs, hurt energy  
576 production, and not provide one scintilla of improvement in  
577 the air that we breathe.

578 So this is a reasoned approach. I was under the  
579 impression that all agencies were required to review their  
580 regulations for their toxic effect on employment. Apparently  
581 Lisa Jackson didn't get that memo, and that is why the White

582 House had to scrap the ozone rule. I hope that the White  
583 House will review the rest of the EPA's extreme regulations,  
584 but if the President refuses to do so, it is important to  
585 note that this committee will do the job that he refuses to  
586 do.

587 Now, you want to talk about harming human health. How  
588 about you talk about the men and women who have lost their  
589 jobs due to this toxic EPA regulations? Talk about families  
590 that are now dependent upon the government for nutrition or  
591 health care as opposing to having a fulfilling employment.  
592 How about people whose energy bills are so high that maybe  
593 their loved ones, maybe an elderly loved one is put at risk  
594 in extreme temperatures of either hot or cold? This EPA's  
595 regulations are affecting people's health, just not in the  
596 way that Lisa Jackson would claim.

597 I think we ought to move these bills quickly and get the  
598 men and women of this country back to work. That is our  
599 focus today, tomorrow, and until the Obama unemployment  
600 totals are a thing of the past.

601 I yield back the balance of my time.

602 [The prepared statement of Mr. Burgess follows:]

603 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
604           Mr. {Whitfield.} At this time I recognize the gentleman  
605 from California, Mr. Bilbray, for 3 minutes for his opening  
606 statement.

607           Mr. {Bilbray.} Thank you, Mr. Chairman.

608           Mr. Chairman, a lot of my perceptions of this bill are  
609 much like Mr. Doyle's. I think that fair people can disagree  
610 on strategies and timing. I take a back seat to no one on  
611 this committee with a background on clean air, and I  
612 challenge that anywhere along the line. I think that as an  
613 individual I have been looking for years waiting for a lot of  
614 these regulations to be implemented. But the fact is,  
615 priorities have to be made, and there is a crisis out there.  
616 There may be major concerns by some scientists about the air  
617 emissions from these industries, but the one thing that is  
618 not questionable is the crisis in jobs right now, and  
619 frankly, the concept that somehow government regulations and  
620 rules have no effect on the economic opportunities for our  
621 working-class people is absolutely absurd, and I think it is  
622 quite clear our responsibility at looking at the appropriate  
623 level and timing for implementation of regulations as being  
624 essential, especially when you have the Administrator of the  
625 EPA clearly say in hearing that her job is not worry about  
626 jobs. Well, it is our job to worry about jobs, and it is

627 easy to say for us in California about let us mandate these  
628 regulations on people in the Midwest and let us put these  
629 regulations in Ohio and Illinois, because we have already  
630 done in it in California. We also face a 12 percent  
631 unemployment rate in California at this time, and I just  
632 wanted to state again that the statements that this is going  
633 to be such an economic boon to require these modifications  
634 may sound great at a hearing in Washington, but you come out  
635 to San Diego, come out to San Francisco, come out to Los  
636 Angeles, you take a look at our economic realities on not  
637 only the price of energy and the economic downturn but the  
638 fact that cement material and the material for construction  
639 is being imported from Mexico as we speak with the related  
640 mobile source emissions not even being considered in the  
641 plant.

642         So I do have a concern about not implementing these  
643 rules, Mr. Chairman, but I have a bigger concern about  
644 implementing these rules at a time that the country is  
645 economically flat on its back, that people are out there  
646 economically in crisis and we don't want to set priorities,  
647 and I would challenge my colleagues and say this. This would  
648 be the kind of thing that everybody would want to agree with  
649 in certain sectors and political structure that we should be  
650 borrowing money to do these improvements as part of a

651 stimulus plan. The fact is, we have got to understand that  
652 we need to do more than just write blank checks and continue  
653 to throw money at the problem. We have an obligation to what  
654 is government doing to stop the ability of the private sector  
655 to respond to the economic crisis.

656 And I will tell you thing, as somebody who spent, you  
657 know, 18 years working regulatory agencies, we need to look  
658 at what we are doing everywhere and do more than just look.  
659 The President promised to do something. We ought to start  
660 taking some action.

661 And I regretfully will support this bill because I think  
662 there are ways to improve it, but I think that the jobs are  
663 more important than any other item at this time and we need  
664 to move forward.

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

666 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
667           Mr. {Whitfield.} At this time I will recognize the  
668 gentleman from Texas, Mr. Olson, for his 3-minute opening  
669 statement.

670           Mr. {Olson.} Thank you, Mr. Chairman, for your  
671 leadership in bringing these two bills before the  
672 subcommittee. I am happy to see that we are moving quickly  
673 to act on bipartisan legislation that will provide regulatory  
674 certainty to businesses that are trying to create American  
675 jobs.

676           As we heard from our expert witnesses during last week's  
677 hearing on these bills, several of the Environmental  
678 Protection Agency's new rules are impeding our Nation's  
679 economic recovery efforts by placing unrealistic demands on  
680 America's job creators.

681           The boiler MACT and cement rule share many similarities  
682 with the proposed ozone rule that President Obama wisely  
683 asked the EPA to withdraw. When the EPA hastily wrote the  
684 boiler MACT and cement rules, they failed to acknowledge the  
685 cumulative impact that these and other major EPA rules would  
686 have on industries' ability to innovate and compete in a  
687 global market. These rules do nothing to promote  
688 predictability and only add to the uncertainty in the  
689 marketplace.

690           This is why I am hopeful that H.R. 2250, the EPA  
691 Regulatory Relief Act of 2011, of which I am an original  
692 cosponsor, and H.R. 2681, the Cement Regulatory Relief Act of  
693 2011, will be signed into law. These bills will give the EPA  
694 the time they requested to correct these seriously flawed  
695 rules and help American businesses grow. We cannot control  
696 what our colleagues in the Senate choose to do with this  
697 legislation but we can send a message that House members are  
698 committing to cutting through the bureaucrat red tape as  
699 hampering job creation.

700           I may be an eternal optimist but I hope that the Senate  
701 and the President will join us in acting on these bills and  
702 these other many job creation jobs that we already passed and  
703 will be passing in the coming months.

704           Thank you, Mr. Chairman. I yield back.

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

706           \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
707 Mr. {Whitfield.} Thank you, Mr. Olson.

708 At this time I will recognize the gentleman from West  
709 Virginia, Mr. McKinley, for a 3-minute opening statement.

710 Mr. {McKinley.} Thank you again, Mr. Chairman.

711 Thousands of jobs in the forestry and the paper industry  
712 have been put at risk by the excessive aggressiveness of the  
713 EPA. Companies and businesses have been forced to either  
714 comply with these regulations in a dismal economic climate or  
715 be forced to shut down. One particular company in my  
716 district employs 500 people and will be forced to pay \$6  
717 million alone just to retrofit their boilers. One firm has  
718 already closed its doors in this climate.

719 The affected businesses in my district are pleading with  
720 me to delay the rules and revisit the science and the cost-  
721 benefit ratio. These companies are already meeting very  
722 stringent EPA standards. They are meeting those. And they  
723 have reduced their environmental emissions drastically since  
724 1990. Now is not the time to tighten the environmental  
725 standards and move the goalposts.

726 Among the boiler MACT, utility MACT, cement MACT, coal  
727 ash rules, America is saying enough is enough. The American  
728 people are fed up with the regulations that threaten their  
729 jobs. Remember, last month, not one job was created in

730 America. We are still at 9.1 percent. Fourteen million of  
731 our neighbors are still looking for jobs.

732 Today we have a bipartisan bill before us. In one small  
733 way, maybe one step at a time, it will save our Nation's  
734 economy. Maybe it is one industry at a time but we have got  
735 to start someplace reining in an excessive regulatory body.

736 Thank you, and I yield back my time.

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

738 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
739 Mr. {Whitfield.} Thank you.

740 At this time I will recognize the gentleman from  
741 Virginia, Mr. Griffith, for a 3-minute opening statement.

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

743 H.R. 2250 is a compromise. Like any compromise, the  
744 language of the EPA Regulatory Relief Act isn't what I might  
745 have done if I were acting alone. However, this language  
746 brought together a group of legislators from both sides of  
747 the aisle with a reasonable approach and reasonable language,  
748 and I am proud to be able to carry and defend this bipartisan  
749 compromise language. This bill has 116 cosponsors of which  
750 24 are Democrats. We have hundreds of letters of support  
751 from businesses, unions and trade associations,

752 Boiler MACT and cement MACT are complex areas of law and  
753 regulation. We are talking about hundreds of pages in the  
754 Federal Register of very complex rules. Businesses need  
755 certainty and they need to know we are going to get the rules  
756 right. These bills simply give us sufficient time to get the  
757 rules right when imposing such complex, expensive  
758 comprehensive rules on businesses that employ thousands of  
759 hardworking Americans. Particularly in this economic  
760 environment, we need to be sure the rules are right.

761 As the EPA told the court last December on boiler MACT,

762 investments required by these rules are irreversible. For  
763 those businesses that decide to stop producing their product  
764 at a particular location, the job losses are also  
765 irreversible.

766 Let me tell you why this matters particularly to me and  
767 my constituents. We have had a number of businesses and  
768 others testify at various hearings that these pending rules  
769 on boiler MACT and cement would negatively impact those.  
770 Four of these companies employ people in the 9th district of  
771 Virginia: MeadWestVaco, Celanese, Titan America, the parent  
772 company of Roanoke Cement, Rock-Tenn. Many others across the  
773 9th district are also affected, and of course, the United  
774 States as a whole. These are real people and these are real  
775 jobs that are on the line.

776 The purpose of H.R. 2250 is to clarify Congress's intent  
777 that the EPA must set standards that are actually achievable  
778 by real-world units, and it is interesting when you look at  
779 the language of the actual underlying bill, and I quote,  
780 ``Emission standards for existing units in a category may be  
781 less stringent than standards for new units in the same  
782 category but shall not be less stringent than the average  
783 emissions limitations achieved by the best-performing 12  
784 percent of units in the category excluding units which first  
785 met the lowest achievable emissions rates 18 months before

786 the date such standards are proposed or 30 months before the  
787 date such standards are promulgated, whichever is later.''  
788 We are in a situation where we are looking at rules that only  
789 apply to the 2 percent. I don't think the original intent  
790 was that you go from 12 to 2. I think 12 was put in there  
791 for a reason. It may not be that you can't go to 10, but I  
792 think from 12 to 2 is too big a spread. I don't think the  
793 EPA is applying rules that meet the original intent of the  
794 legislation.

795 I think this new legislation is necessary and I ask that  
796 you pass both bills.

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

798 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
799           Mr. {Whitfield.} At this time I will recognize the  
800 gentleman from Louisiana, Mr. Scalise, for a 3-minute opening  
801 statement.

802           Mr. {Scalise.} Thank you, Mr. Chairman. I appreciate  
803 you having this markup and bringing these bills forward  
804 because, you know, when we look out and talk to our  
805 constituents, talk to people around the country about what  
806 they are really concerned about the most, it is jobs. They  
807 want us to be up here focusing on job creation, and in fact,  
808 when I went throughout my district during the August recess,  
809 as I am sure many of colleagues did, I met with a lot of  
810 small business owners, a lot of people who are out there  
811 trying to create jobs in this tough economy, and they could  
812 create jobs in this tough economy except one big impediment  
813 that they all cite. It seemed like a universal theme that  
814 all the small business owners I met were talking about, and  
815 they said it is the regulations coming out of this  
816 Administration that are stopping them from being able to  
817 create jobs, and EPA is probably the worst culprit. EPA  
818 seems to be on a mission to go after industry after industry  
819 implementing a radical agenda that has absolutely nothing to  
820 do with health and safety.

821           And don't take my word for it. Let us just look at the

822 ozone standard that was released a couple of weeks ago by the  
823 EPA. They talked about all these health benefits, and we  
824 have heard some of our colleagues on the other side who  
825 oppose the legislation today that is brought before us that  
826 will roll back some of these radical rules that the EPA is  
827 trying to impose on our small business owners. They talk  
828 about health and safety and they hide behind health and  
829 safety, as if anybody here is against health and safety.  
830 That is ludicrous to suggest that.

831 But in fact, if you look at what the EPA said about the  
832 ozone standard they were trying to go forward with, they said  
833 it would stop 380,000 cases of chronic bronchitis, 243,000  
834 days when people miss work or school that they would prevent,  
835 750,000 days when people must restrict their activities, over  
836 1,000 cases of acute bronchitis they would prevent with their  
837 rules and regulations. And was it Republicans that stood in  
838 the way of them implementing these rules that supposedly  
839 would do all these great things for health? No, it was  
840 President Obama himself who said the EPA is out of control,  
841 who said all of these statements that they make about health  
842 and safety are not even accurate because do you think the  
843 President himself wants 1,000 more cases of bronchitis? I  
844 don't think President Obama wants to do that. I don't think  
845 President Obama wants 243,000 more days missed through sick

846 because the President himself said that these rules under  
847 ozone that EPA was trying to go forward with were out of  
848 control, and frankly, what we are seeing with these two bills  
849 on cement and boiler MACT that the EPA is overstepping their  
850 authority in a way that has nothing to do with health and  
851 safety but is killing jobs in America and it is rule after  
852 rule and regulation after regulation. We don't need more  
853 stimulus bills, more spending of money we don't have, more  
854 taxes increases on the very small business owners and middle-  
855 class families that are struggling out there, the trillions  
856 of dollars of money on the sidelines that every economist  
857 will tell you is out there that could be used to create jobs  
858 but can't be because of these radical rules and regulations.

859 Give up this radical agenda. Let us create jobs and  
860 stand up for health and safety, and that is why we need to  
861 pass these bills.

862 Thank you, Mr. Chairman. I yield back.

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

864 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
865 Mr. {Whitfield.} Thank you, Mr. Scalise.

866 I think everyone has completed their opening statements.  
867 Mr. Waxman, who is the ranking member of the full committee,  
868 is on his way. He has been delayed and has asked us to give  
869 him an opportunity to make an opening statement as well as  
870 participate in the debate, so I am going to recess this  
871 markup for 10 minutes and hopefully at that time he will be  
872 here, so we will reconvene at 10 minutes after 11:00.

873 [Recess.]

874 Mr. {Whitfield.} I will call this committee markup back  
875 to order, and at this time I would like to recognize the  
876 ranking member of the full committee, the gentleman from  
877 California, Mr. Waxman, for his 5-minute opening statement.

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

879 As Steven Pearlstein recently wrote in the Washington  
880 Post, the bumper sticker for this year's Republican  
881 presidential candidates is simple: ``Repeal the 20th  
882 century. Vote GOP.''

883 Social Security, an institution that provides a critical  
884 safety net to seniors, is being falsely labeled a Ponzi  
885 scheme. Medicaid and Medicare, which provide essential  
886 health care to American families, are under attack. The  
887 candidates take turns threatening to shutter the

888 Environmental Protection Agency, the one cop on the beat that  
889 can stand up to the big polluters.

890         And this approach doesn't stop with the presidential  
891 candidates. This House of Representatives is the most anti-  
892 environmental House in history. The House has voted 125  
893 times this Congress to block action to address climate  
894 change, to halt efforts to reduce air and water pollution, to  
895 undermine protections for public lands and coastal areas, and  
896 to weaken the protection of the environment in other ways.

897         Yesterday, I posted a searchable database of these anti-  
898 environment House votes on the committee website. I hope the  
899 public will visit [democrats.energycommerce.house.gov](http://democrats.energycommerce.house.gov) to  
900 examine the radical policies being advanced by the  
901 Republicans in the House.

902         Today, the assault continues. This Committee considers  
903 legislation to gut Clean Air Act provisions that protect  
904 American families from toxic air pollution. If the bills we  
905 consider today are enacted, we know there will be more cases  
906 of cancer, birth defects and brain damage. We will harm the  
907 way our children think and learn. We have long known that  
908 toxic air pollutants such as mercury, arsenic, dioxin, lead,  
909 and PCBs can cause these serious health effects.

910         In 1990, Congress adopted a bipartisan approach to  
911 protect the public from toxics. The new program listed 187

912 toxic air pollutants and directed EPA to set standards  
913 requiring the use of maximum achievable control technology  
914 for categories of sources. This approach has worked well.  
915 Industrial emissions of carcinogens and other highly toxic  
916 chemicals have been reduced by 1.7 million tons each year.  
917 EPA has reduced pollution from dozens of industrial sectors,  
918 from boat manufacturing to fabric printing, from lead  
919 smelters to pesticide manufacturing.

920 But a few large source categories still have not been  
921 required to control toxic air pollution due to delays and  
922 litigation. These include utilities, industrial boilers and  
923 cement plants. EPA's efforts to finally reduce toxic air  
924 pollution from these sources are long overdue.

925 The bills we consider today would block and indefinitely  
926 delay EPA's efforts to reduce toxic emissions from two of  
927 these major sources. They would also rewrite the MACT  
928 standards once again, this time to weaken the protections and  
929 set up new hurdles for EPA rules. We are told that these  
930 bills simply give EPA the time they requested to get the  
931 rules right. That is nonsense. EPA vigorously opposes these  
932 bills.

933 We are also told that we need to pass these bills  
934 because the threat of EPA regulation is dragging down our  
935 economy. That is legislative opportunism at its worst. It

936 was the lack of regulation of Wall Street banks that caused  
937 this recession, not environmental regulations that protect  
938 children from toxic mercury emissions.

939         Mr. Pearlstein wrote: ``Listening to the Republicans  
940 talk about the economy and economic policy is like entering  
941 into an alternative universe.'' He is right, and these bills  
942 are additional proof.

943         Yesterday, I asked whether the Republican majority would  
944 be interested in working on a compromise bill that would give  
945 EPA some additional time and clarify when a facility will be  
946 considered a boiler and when it will be considered an  
947 incinerator. The response was, in effect, we have the votes  
948 and don't need to negotiate. You may have the votes in the  
949 House, but that doesn't justify a legislative approach that  
950 ignores the facts and jeopardizes public health.

951         As these bills move through the committee, I hope we  
952 will find the courage to say no to the special interests, to  
953 think carefully about the facts and the science, and to do  
954 what is right for American families. Until then, I urge my  
955 colleagues to vote no on these extreme bills, and I yield  
956 back the second I have left.

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

958 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|

959 Mr. {Whitfield.} Thank you, Mr. Waxman.

960 Are there any further opening statements?

|

961 H.R. 2681

962 Mr. {Whitfield.} Well, the chair at this time then  
963 would call up H.R. 2681 and ask the clerk to report.

964 The {Clerk.} H.R. 2681, to provide additional time for  
965 the Administrator of the Environmental Protection Agency to  
966 issue achievable standards for cement manufacturing  
967 facilities--

968 [H.R. 2681 follows:]

969 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|  
970           Mr. {Whitfield.} Without objection, the first reading  
971 of the bill is dispensed with and the bill will be open for  
972 amendment at any point. So ordered.

973           Are there any bipartisan amendments?

974           Mr. {Rush.} Mr. Chairman?

975           Mr. {Whitfield.} Yes, sir.

976           Mr. {Rush.} I have an amendment. I hope that it is  
977 bipartisan.

978           Mr. {Whitfield.} Okay. Would the clerk report the  
979 amendment?

980           The {Clerk.} Amendment to H.R. 2681 offered by Mr.  
981 Rush. At the end of Section 5, add the following--

982           [The amendment follows:]

983           \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
984           Mr. {Whitfield.} Without objection, we will dispense  
985 with the reading of the amendment, and I will recognize the  
986 gentleman for 5 minutes to speak in favor of his amendment.

987           Mr. {Rush.} I want to thank you, Mr. Chairman, and Mr.  
988 Chairman, I do really hope that at the end of my statement  
989 and when we take the vote that there will be enlightened  
990 voting on this particular issue and that it will be  
991 bipartisan.

992           The proponents of this bill argue that it will provide  
993 certainty to industry by clarifying how EPA sets standards on  
994 toxic air pollution under the Clean Air Act. Section 5 of  
995 this bill won't provide certainty, though. It will just  
996 promote years and years and years of unnecessary litigation  
997 and potentially gut important public health protections.

998           Cement kilns are a major source of mercury pollution and  
999 other toxic air pollutants. Until last year, cement kilns  
1000 had managed to avoid any sort of requirement to reduce these  
1001 emissions. In August, the EPA finalized requirements for  
1002 these kilns to use available technology to cut their  
1003 pollution, but this bill could take us backwards and allow  
1004 cement kilns to continue polluting the air for years to come.

1005           I am particularly concerned about Section 5 of the bill.  
1006 It requires the EPA to set emissions standards for cement

1007 kilns that can be ``consistently and concurrently.'' It also  
1008 requires the EPA to select the ``least burdensome''  
1009 regulatory alternative even if a stronger standard is  
1010 feasible and will provide more public health benefits. Words  
1011 like ``least burdensome'' and ``consistent'' sound reasonable  
1012 but this section could dramatically weaken EPA's ability to  
1013 require cement kilns to meet emission limits on toxic air  
1014 pollutants such as mercury and dioxins and other pollutants.

1015         Let me tell you the problems with Section 5. The Clean  
1016 Air Act requires EPA to set air pollution standards for  
1017 cement kilns based on what facilities are actually achieving  
1018 today. It is a practical approach. The law also requires  
1019 the EPA to calculate an emissions floor for each toxic air  
1020 pollutants that reflects emissions levels that are being  
1021 achieved in the real world, not in a lab but in the real  
1022 world. But Section 5 could compel EPA to set emissions  
1023 standards based on the worst-performing, most-polluting  
1024 facility that are using available technology to reduce their  
1025 toxic pollution. That simply does not make any sense.

1026         Secondly, Mr. Chairman, this section could lower the bar  
1027 even more by compelling EPA to choose ``the least burdensome  
1028 regulatory option.'' Even if this option doesn't go far  
1029 enough to protect the public health, it compels the EPA to  
1030 choose the least burdensome option.

1031 I have been saying that this bill could gut the Clean  
1032 Air Act. It has the potential to weak public health  
1033 protections. That is because the language in the bill isn't  
1034 clear. Does the bill intend to let polluters off the hook?  
1035 One question. Or does the bill intend to provide guidance  
1036 for EPA when it is setting pollution reduction requirements  
1037 for cement kilns.

1038 This amendment clarifies the intent. It states that the  
1039 language in Section 5 supplements but does not replace the  
1040 requirement that EPA sets numeric emissions limits to achieve  
1041 maximum reduction in toxic air pollution unless such limits  
1042 are not feasible.

1043 Mr. Chairman, this is a good amendment, a commonsense  
1044 amendment, and I urge my colleagues to support this  
1045 amendment.

1046 Mr. {Whitfield.} Thank you, Mr. Rush.

1047 I recognize the gentleman from Illinois, Mr. Shimkus, to  
1048 speak in opposition to the amendment.

1049 Mr. {Shimkus.} Thank you, Mr. Chairman.

1050 My colleague said supplement but does not replace. The  
1051 whole idea of this bill is to create certainty by the  
1052 industrial sector in this aspect, cement plants, and again,  
1053 in my opening statement, this is exactly what I talked about  
1054 in the opening statement is that we don't want to create

1055 confusion, we want to create certainty, and it is not too  
1056 much to ask that we know that these standards are achievable  
1057 by real-world facilities, not desktop analysis, not  
1058 mathematical formulas or equations but ones that industry can  
1059 actually achieve. I know it is crazy but for those people  
1060 who are employed in these facilities and that have gone to  
1061 great lengths to expand production, create jobs, continue to  
1062 pay a good wage, continue to provide health care benefits,  
1063 our concern is uncertainty breeds a real-world response of  
1064 closure.

1065           And so I ask my colleagues to reject this amendment and  
1066 I yield back my time.

1067           Mr. {Whitfield.} The gentleman from California, Mr.  
1068 Waxman, is recognized for the purpose of speaking on the  
1069 amendment.

1070           Mr. {Waxman.} Mr. Chairman, I support Mr. Rush's  
1071 amendment. It addresses one of the most egregious provisions  
1072 in this bill. Section 5 of this bill requires PEA to set  
1073 emissions standards for cement kilns that can be met  
1074 ``consistently and concurrently'' with emissions standards  
1075 for all other air pollutants, taking into account a variety  
1076 of factors. It also requires EPA to set the least burdensome  
1077 regulatory alternative.

1078           On the face, that sounds reasonable but in actuality

1079 this section would dramatically weaken EPA's ability to  
1080 require cement kilns to reduce toxic air pollutants such as  
1081 mercury and dioxins. At a minimum, it is utterly unclear how  
1082 the new language interacts with the existing criteria for  
1083 standard setting. On controversial issues like this, you can  
1084 be sure this ambiguity will guarantee years if not decades of  
1085 litigation.

1086         The Clean Air Act requires EPA to set toxic air  
1087 pollution standards for cement kilns based on the best  
1088 performers in the industry, the facilities with the lowest  
1089 emission levels. EPA is not going to base its emission  
1090 reduction on pie-in-the-sky technologies. The act requires  
1091 EPA to calculate an emissions floor for each toxic air  
1092 pollutant that reflects emissions levels that are actually  
1093 being achieved in the real world.

1094         Section 5 of this bill may gut these public health  
1095 protections. First, this section could compel EPA to set  
1096 emissions standards based on the worst-performing, most-  
1097 polluting facility rather than the best-performing facility  
1098 that is utilizing available technology to clean up its toxic  
1099 pollution. That doesn't make any sense at all.

1100         Secondly, this section could compel EPA to choose the  
1101 least burdensome, which means to reduce toxic air pollution  
1102 including so-called work practice standards. Currently, EPA

1103 is allowed to substitute a work practice standard such as an  
1104 annual tune-up of a facility only if a numeric emissions  
1105 limit is not feasible. This section seems to require EPA to  
1106 choose the less protective option in lieu of meaningful  
1107 emissions reductions, even if they are feasible and  
1108 achievable. That doesn't make sense either.

1109 I have been saying that this section could gut the Clean  
1110 Air Act and may weaken public health protections. That is  
1111 because the language in the bill is not clear. At the  
1112 hearing last week, Gina McCarthy from EPA testified that this  
1113 section could raise legal uncertainty because it is not clear  
1114 whether or not it trumps current law. Environmental lawyers  
1115 who have been litigating these provisions for decades believe  
1116 they would trump the current standards. In other words, this  
1117 section would create more litigation and uncertainty,  
1118 contrary to what my friend and colleague from Illinois, Mr.  
1119 Shimkus, asserted.

1120 If the supporters want to give industry more regulatory  
1121 certainty, they should support clarifying an obvious and  
1122 fundamental ambiguity in the bill, and that is what Mr.  
1123 Rush's amendment would do. It simply states that the  
1124 language in Section 5 supplements but does not replace the  
1125 requirements that have been in the Clean Air Act for the past  
1126 20 years. It clarifies that EPA should set numeric emissions

1127 limits to reduce toxic air pollution unless such limits are  
1128 not feasible.

1129         My colleagues have two choices: support this amendment  
1130 to clarify this bill and not design to gut the Clean Air Act  
1131 or oppose the Rush amendment and admit that the bill goes  
1132 much further than its supporters claim it does.

1133         I urge my colleagues to support the Rush amendment.

1134         Mr. {Whitfield.} The gentleman from Oklahoma, Mr.  
1135 Sullivan, is recognized for 5 minutes to speak on the  
1136 amendment.

1137         Mr. {Sullivan.} Thank you, Mr. Chairman.

1138         Sections 112 and 129 direct EPA to set maximum  
1139 achievable control technology for sources that emit hazardous  
1140 pollutants. While it should be clear from the statute that  
1141 these be achievable in practice, courts have created  
1142 ambiguity. Because of misrepresentation by the courts, EPA  
1143 is following a pollutant-by-pollutant approach and setting  
1144 standards that cannot be met by real-world cement plants.  
1145 This is sometimes referred to as the ``Frankenplant  
1146 problem.''

1147         The purpose of H.R. 2681 is to clarify Congress's intent  
1148 that EPA must set standards that are actually achievable in  
1149 practice by real-world units. H.R. 2681 specifies the  
1150 Administrator must ensure that the emissions standards set

1151 can be met under actual operating conditions and can be met  
1152 at the same time for all pollutants being regulated under the  
1153 rule. Put simply, ``achievable'' means achievable.

1154 This amendment would create confusion for EPA because  
1155 the agency would have to choose between existing language in  
1156 the statute and Congress's clarifications in this bill that  
1157 the standards being set are achievable in practice by real-  
1158 world facilities. Ambiguity has kept these rules in  
1159 litigation since 1999 and it is critical that Congress  
1160 provide additional direction to EPA.

1161 I urge a strong no vote on this amendment, and I yield  
1162 to Congressman Walden.

1163 Mr. {Walden.} Thank you very much.

1164 You know, I don't think we would necessarily be here  
1165 today if the EPA weren't on some jihad against jobs in  
1166 America, and I say that because they had the opportunity  
1167 under the Clean Air Act to create subcategory for some of  
1168 these cement plants, and in fact, there were a number of us  
1169 who encouraged them to do so for one of these two plants  
1170 because it is located in my district that has invested \$20  
1171 million in the latest and best technology available to reduce  
1172 emissions, carbon injection technology. Despite our various  
1173 pleas to use the discretion allowed under the Clean Air Act  
1174 and create a subcategory, the EPA declined. And so as a

1175 result, you know, it is kind of ironic that today the  
1176 President is going to be out I think in Ohio, Columbus, Ohio,  
1177 talking about jobs. He is after us all the time to vote for  
1178 a jobs bill that we have only just begun to look at and yet  
1179 here he has an agency that is on a jihad against jobs, 107 of  
1180 them in Baker County out in Durkee, Oregon. I think it is  
1181 the biggest private sector employer certainly in terms of  
1182 overall payroll in the county in rural Oregon. This plant  
1183 has been there, I don't know, 20, 30 years probably. They on  
1184 their own without a national standard invested \$20 million to  
1185 reduce their emissions by more than 90 percent, nine zero,  
1186 but it so happens the limestone in that area has a little  
1187 higher content of mercury, and they are working to try and  
1188 even capture more.

1189 Now, I don't think there has ever been a case of mercury  
1190 poisoning in Baker County that has been documented. I asked  
1191 the other day when the Assistant Secretary was here for the  
1192 specific data on their analyses as it relates to Oregon. A  
1193 lot of the pollution we get comes through the atmosphere from  
1194 China. And guess what? You force all this manufacturing  
1195 offshore, where do you think it is going? It is going to  
1196 China, and we get to breathe the unregulated air that is  
1197 coming over, and so the pollutants drop especially on the  
1198 West Coast and we lose the jobs and we get their pollution.

1199 Now, that is not a very good prescription for an American  
1200 renaissance.

1201 And so that is why we are here today. We are here to  
1202 say we have to do this differently. If the EPA won't work  
1203 cooperatively with us on this, then they need difference  
1204 guidance and direction from the United States Congress.

1205 So I oppose this amendment, and let us not forget that  
1206 ambiguity has kept all these rules in litigation since 1999  
1207 as it is, so I think it is critical that Congress provide  
1208 additional direction to the--

1209 Mr. {Rush.} Will the gentleman yield?

1210 Mr. {Walden.} I am on Mr. Sullivan's time so I would  
1211 yield.

1212 Mr. {Rush.} You know, I keep hearing about jobs, and I  
1213 want you to know that in 1996 the U.S. cement plants employed  
1214 some 17,900 workers and they produced 77 tons of Portland  
1215 cement, 17,900. Ten years later in 2006, U.S. plants turned  
1216 out nearly 100,000 tons but with a smaller workforce, and  
1217 this is during the Bush years, during the Bush  
1218 Administration, during the EPA that was under President Bush.  
1219 They had less employees, 16,300 employees, almost 1,000 less  
1220 employees but with more production. Domestic production has  
1221 collapsed during the recession.

1222 Mr. {Whitfield.} The gentleman's time has expired.

1223 I will recognize myself for 5 minutes, and I yield to  
1224 the gentleman from Oregon.

1225 Mr. {Walden.} I thank the subcommittee chairman. I am  
1226 not sure what the point of my friend from Illinois is other  
1227 than the fact there are fewer people working in this  
1228 industry, which neither of us, I would think, would support,  
1229 and if the EPA has its way, there is likely to be 107 fewer  
1230 people directly and 654 overall in rural eastern Oregon that  
1231 are going to be working for them.

1232 So if your point is we need more people working in this  
1233 industry, then join us in this legislation and block the  
1234 jihad against jobs that is coming out of this EPA that is  
1235 affecting real-world jobs in the United States, and this does  
1236 not require some sort of tax increase or bailout. It doesn't  
1237 require borrowing. It just requires common sense in  
1238 regulation. And these agencies have lost the sense of common  
1239 sense.

1240 I was a small business owner for 20 years. I have dealt  
1241 with agencies, not as much as a lot of other small businesses  
1242 but I will tell you what, everywhere I go in my district, and  
1243 I know many of my colleagues at least on our side of the  
1244 aisle are hearing the same thing, one rule after another  
1245 after another is either putting businesses out of business or  
1246 the threat of these rules coming has them frozen because they

1247 don't know what it is going to look like after 2011, after  
1248 2012 or after 2013, so they are saying I don't know how to  
1249 plan, I don't know how to invest.

1250         Now, if you have never met a payroll and you have never  
1251 risked your own capital, I don't think you can fully  
1252 appreciate in your gut what those of us who have feel when  
1253 you have got a big federal agency on top of you that appears  
1254 to when it has discretion not use it, and I mean, it just  
1255 goes on and on and on.

1256         I met with some guys that have a gravel pit, if you  
1257 will, in central Oregon. They have been working with the  
1258 Bureau of Land Management for 2-1/2 months to figure out if  
1259 they can put gravel on a gravel road for a half a mile  
1260 stretch so that it doesn't become muddy this winter and  
1261 prevent them from hauling the rock to do get the contract to  
1262 do the jetty work on the mouth of the Columbia River. If  
1263 they can't get that done, they risk losing this ability to  
1264 have this contract. And guess where that kind of rock is  
1265 going to come out of? Canada. So one--

1266         Mr. {Rush.} Will the gentleman yield?

1267         Mr. {Walden.} No, I won't yield.

1268         One after another after another agency is dumping down  
1269 on small businesses in America and putting them at risk. I  
1270 just met with some people from the town of--

1271 Mr. {Rush.} Mr. Chairman, who controls the time? Will  
1272 you yield?

1273 Mr. {Whitfield.} Mr. Walden--

1274 Mr. {Walden.} Well, I would just--reclaiming. I met  
1275 with these people from The Dalles, Oregon. I can't tell you  
1276 how many different projects they have on their port property  
1277 that are now being held up by federal agencies over debates  
1278 over rules and regulations, real live jobs. They just had a  
1279 company that was set to build a facility on their port that  
1280 it took state and federal regulators I think more than a year  
1281 to figure out the permitting process, and guess what? That  
1282 company, Billabong, decided instead to build a plant in  
1283 Canada.

1284 You know, you can tell me all you want about how he  
1285 government is here to help, but in the real world of small  
1286 business, the only help they really want is to get the  
1287 government out of the way or give them certainty.

1288 Mr. {Rush.} Would the gentleman yield?

1289 Mr. {Walden.} This legislation will do both.

1290 Mr. {Whitfield.} I control the time, and I would be  
1291 happy to yield a minute to the gentleman from Illinois.

1292 Mr. {Rush.} I want to thank you, Mr. Chairman, because  
1293 I mean, you know, this is--I guess this is expediting science  
1294 that we are preparing to do. I mean, you were here during

1295 the Bush years. You have not muttered not one mumbling word  
1296 about the conduct of the EPA during the 8 years of the Bush  
1297 Administration. But now the EPA is all of a sudden the jihad  
1298 of job insecurity, or job security now, and I wonder where  
1299 you were then.

1300 Look, let us be--

1301 Mr. {Walden.} Will the chairman yield?

1302 Mr. {Rush.} Let us be clear. The industry won't  
1303 recover until the demand picks up again. If in fact you are  
1304 so supportive of jobs, then why don't you become a sponsor of  
1305 President Obama's American Jobs Act?

1306 Mr. {Whitfield.} I am going to reclaim my time. I will  
1307 say this, that the unemployment rate certainly was not as  
1308 high in the Bush Administration, and I would yield to the  
1309 gentleman from Oregon.

1310 Mr. {Walden.} Well, I guess the point would be, I hope  
1311 that the economy turns around and I am doing my part to try  
1312 and get it there and I know you are doing your part from the  
1313 way you see it. But the point is, if these rules force the  
1314 closure of a domestic cement plant in my district, it doesn't  
1315 matter what the economy looks like. The cement is going to  
1316 come from somewhere else. And that is 107 direct jobs, 650  
1317 indirect jobs. My colleague from Nebraska points out using  
1318 EPA's own calculations under these rules you would lose, if

1319 it 20 percent reduction in production, 3,260 jobs.

1320 And by the way, during the Bush Administration, I fought  
1321 the same EPA on some of these--

1322 Mr. {Waxman.} Mr. Chairman.

1323 Mr. {Whitfield.} My time is expired.

1324 Mr. {Barton.} Mr. Chairman.

1325 Mr. {Whitfield.} For what purpose does the gentleman  
1326 form California seek recognition?

1327 Mr. {Waxman.} To strike the last word.

1328 Mr. {Whitfield.} Without objection.

1329 Mr. {Waxman.} Am I recognized, Mr. Chairman?

1330 Mr. {Whitfield.} Without objection, the gentleman is  
1331 recognized for--

1332 Mr. {Waxman.} --unanimous consent that is required for  
1333 me being able to speak. I do seek to be recognized.

1334 Mr. {Whitfield.} I thought that the gentleman had  
1335 already been recognized to speak on the amendment previously.

1336 Mr. {Waxman.} I spoke to support the amendment. I am  
1337 now seeking to strike the last word on the bill.

1338 Mr. {Whitfield.} The gentleman is recognized.

1339 Mr. {Waxman.} Mr. Chairman, let me just point out to my  
1340 colleagues, you have a different view of the world. You  
1341 think that the recession that is happening now has something  
1342 to do with the rules that are being proposed for the future.

1343 Small businesses are losing a lot of their employees, they  
1344 are closing a lot of their plants not because of rules that  
1345 are in effect that are harmful to them or burdensome to them,  
1346 it is because of this recession.

1347 Now, many of us believe this recession was due to the  
1348 policies of the Bush Administration, and for those on this  
1349 committee that were around during those years, some of the  
1350 votes they cast to give huge tax breaks, to fund two wars, to  
1351 fund an extension of the entitlement under Medicare without  
1352 paying for any of it, and now we have in addition to the  
1353 downturn in the economy, a huge budget deficit.

1354 We have a lot of people unemployed. We all want to get  
1355 people back to work. I must say that I have serious doubts  
1356 how cutting programs will get people back to work now. That  
1357 is not to say we don't need to deal with the deficit, but  
1358 when the States cut back on money for schools, teachers are  
1359 fired. When they cut back on money for communities and  
1360 cities, policemen and firemen are fired. If there is no  
1361 demand for the product of manufacturers, the manufacturers  
1362 start closing up. And if they can get cheaper labor  
1363 somewhere else, they move somewhere else. That has nothing  
1364 to do with the environmental rules.

1365 Let me just say since my colleague from Oregon said  
1366 nobody can understand this unless you have to meet a payroll,

1367 some of us didn't have the opportunity to be born to a family  
1368 that had a business for which we then had to make a payroll  
1369 when we inherited it.

1370 Mr. {Walden.} Would the gentleman yield on that point?

1371 Mr. {Waxman.} I am not yielding. I am not yielding.

1372 You didn't yield; I am not going to yield.

1373 But some of us know families with children who have been  
1374 exposed to mercury and who have cancer. Some of us know  
1375 families whose children have a difficult time learning in  
1376 school because they have been exposed to toxic air  
1377 pollutants. Some of us have gone to communities where there  
1378 are chemical plants and these chemical plants were spewing so  
1379 much toxic emission in the surrounding community that people  
1380 had to sleep on a slant so as not to drown in their own  
1381 fluids in their lungs.

1382 There are people who suffer from these toxic air  
1383 pollutants, so to say we should ignore that in order to give  
1384 a break to small businesses who are hurting because of the  
1385 recession, it doesn't add up. We should all want to protect  
1386 from these toxic air pollutants but the bill that is before  
1387 us doesn't try to deal with toxic air pollutants, it tries to  
1388 deal with tying the hands of the Environmental Protection  
1389 Agency so they are not able to deal with under laws that were  
1390 passed by the Congress with bipartisan support.

1391 I have no doubt trying to meet a payroll is a problem,  
1392 especially in a downturn in the economy. I have no doubt it  
1393 is a problem for businesses to try to figure out how to make  
1394 sure they are living up to the regulations. But I am certain  
1395 if there is litigation that goes on and on and on, these  
1396 people have no idea when they run their business what will be  
1397 expected of them, and I think if you ask them, they want to  
1398 stop these pollutants as well. And to tell them that there  
1399 is no such thing as a pollutants, there is no real problem,  
1400 they should ignore it because they have to meet a payroll may  
1401 help them in the short term but it is not going to help them  
1402 in the long term and it is certainly not going to help people  
1403 who are injured because of these toxic air pollutants.

1404 Now I would be happy to yield to the gentleman from  
1405 Oregon, and I want to say that I should not have been so  
1406 personal and I regret it.

1407 Mr. {Walden.} Not only should you not have been so  
1408 personal and regret it, at least you could have been  
1409 accurate. I did not inherit my business.

1410 Mr. {Waxman.} Well, if I was wrong about that, I am  
1411 pleased to be corrected.

1412 Mr. {Walden.} Well, I would think I would know, and you  
1413 are wrong. My wife and I purchased our business in 1986 from  
1414 my parents when they sold it to us, and I don't know what the

1415 hell that has to do with the debate here anyway other than a  
1416 personal attack.

1417 Mr. {Waxman.} Well, I don't know what--reclaiming my  
1418 time. I don't know what it means when you say ``personally I  
1419 had to meet a payroll.''

1420 Mr. {Walden.} I did.

1421 Mr. {Waxman.} And ``I had a difficult time doing it.''

1422 Mr. {Walden.} I did.

1423 Mr. {Waxman.} No, you met a payroll and you were able  
1424 to do it within the family the opportunity to have this  
1425 business. God bless you. I wish my father's business had  
1426 been successful and then maybe I would be a tycoon and a  
1427 mogul back in L.A. and I wouldn't have this job.

1428 Mr. {Walden.} That makes two of us.

1429 Mr. {Waxman.} But I think if you are going to  
1430 personalize it one way, let us understand, let us personalize  
1431 it the other.

1432 Mr. {Whitfield.} The gentleman's time is expired.

1433 Mr. {Walden.} Mr. Chairman, I move to strike the last  
1434 world

1435 Mr. {Barton.} Mr. Chairman.

1436 Mr. {Whitfield.} For what purpose does the gentleman  
1437 from Oregon--

1438 Mr. {Walden.} I move to strike the last word.

1439 Mr. {Whitfield.} The gentleman is recognized for 5  
1440 minutes.

1441 Mr. {Walden.} I don't think I ever said that any  
1442 particular member on either side has or not met the payroll.  
1443 I don't know why we had to make this personal. I can just  
1444 tell you that when my parents decided to retire, they offered  
1445 us the opportunity to buy the business at a market rate, at a  
1446 cash-flow rate that was industry standard, I can assure you,  
1447 and we set about doing that over 20 years.

1448 We also grew the business. There were times we didn't  
1449 even pay ourselves, and that--you know, I guess in that  
1450 business as a small market broadcaster in The Dalles and Hood  
1451 River, you know who our clients were, were small business  
1452 people. That is who advertised. And it gives you a really  
1453 unique perspective to work day in and day out with people who  
1454 are just like you trying to figure out how to achieve an  
1455 American dream, how to risk their own capital, how to work  
1456 their tails off. You know, in small business, you get to set  
1457 all your own hours, all of them, day and night in some cases,  
1458 and sometimes you succeed and sometimes you fail, and that is  
1459 what America is really all about.

1460 But when you have got every day you are trying to deal  
1461 with employment issues, you are trying to deal with  
1462 competition, you are trying to deal with your own product

1463 improvement and keep everything running and then you get this  
1464 uncertainty of government regulation, and I am just telling  
1465 you, as I go around and continue to talk to my friends in the  
1466 small business world, they are saying I don't know what to  
1467 do, I don't know with the President's health care reform  
1468 proposal, what that is really going to mean to me, I am  
1469 trying to set up because I know those are going to phase in a  
1470 couple of years, do I expand now, don't I, how am I going to  
1471 be affected, what are the rates going to be. I talked to a  
1472 guy this weekend who is planning a \$3 million expansion of  
1473 his business. It is a co-op. And between new EPA rules on  
1474 fuel that may be coming, it may affect all the tanks he just  
1475 put in, it has probably been 10 years now to deal with the  
1476 leaking underground tanks, and where he thought he had like a  
1477 30-year life on those, he now may have to pull them out and  
1478 put new ones in, and that may become his plan to make some  
1479 other changes and so now he is trying to figure out can I  
1480 even cash flow this thing, and it just one thing after  
1481 another after another, and it is that uncertainty, and it  
1482 does cost jobs, and I guess that is as I get out, and maybe I  
1483 am unique in my district but I don't think I am.

1484 Mr. {Waxman.} Will the gentleman yield?

1485 Mr. {Walden.} The heartbeat of America is small  
1486 business, and that is certainly true in a district like mine

1487 that you get one job at a time, two jobs at a time. Maybe  
1488 you get a big company that shows up, that is great, but the  
1489 core of our economy in rural Oregon and rural America is  
1490 little mom-and-pop businesses, and some of these guys don't  
1491 even make minimum wage if they really actually calculated the  
1492 hours they put into their own business but they do it because  
1493 they believe in it, and I just want to see an America where  
1494 the government isn't the enemy.

1495         And none of us is talking about increasing pollution and  
1496 doing all this stuff. You know, we all want clean water,  
1497 clean air and all that. I sit in my hometown of Hood River,  
1498 and because of in some measure the lack of our ability to  
1499 actively manage our federal forestlands, we are choking on  
1500 smoke right now, far more smoke than any plant puts out, I  
1501 will tell you, because of these forest fires that are burning  
1502 away and threatening watersheds including Portland's Bull Run  
1503 watershed, and it is just one thing after another, and I am  
1504 just sick of it and I am going to do something about it, and  
1505 we can, and we can do it logically, we can do it thoughtfully  
1506 and we are doing that with this legislation, and I yield  
1507 back.

1508         Mr. {Waxman.} Does the gentleman yield?

1509         Mr. {Walden.} I would, I yielded back, but I would be  
1510 happy to yield to the gentleman from California.

1511 Mr. {Waxman.} I thank you for yielding. I respect you  
1512 and I understand what you are saying and the sincerity in  
1513 which you are saying it. But my point is, that we need to  
1514 work together because I think it is an unreal universe when  
1515 we think the only problems are the regulations. We need to  
1516 get people working. We need to develop the economy. We need  
1517 to be mindful of these toxic air pollutants, and we have to,  
1518 I believe, also--now, you may disagree with this, that some  
1519 of those climate problems that are causing this country so  
1520 much distress is due to the fact that we are not acting to  
1521 reduce greenhouse gases.

1522 So let us figure out what the facts are and what we can  
1523 do to help businesses succeed. If these regulations don't go  
1524 into effect, what those small businesses are experiencing,  
1525 they will continue to experience until we get this economy  
1526 going again. I thank you for yielding.

1527 Mr. {Whitfield.} Is there anyone seeking recognition to  
1528 speak on the Rush amendment?

1529 Mr. {Barton.} I am.

1530 Mr. {Whitfield.} The gentleman from Texas, Mr. Barton,  
1531 is recognized for 5 minutes.

1532 Mr. {Barton.} Well, I am going to speak briefly on the  
1533 Rush amendment in that I oppose it. I think it is  
1534 unnecessary. I appreciate my Chicago Bear for offering it

1535 but I won't be able to.

1536 I do want to say some kind words to the ranking member,  
1537 Mr. Waxman. I have been in his shoes. It is no fun. You  
1538 know you are going to get beat every day you show up. You  
1539 look over and we have got, I think, 13 or 14 votes and you  
1540 look around and you have got two, four now that the cavalry  
1541 has arrived with Mr. Inslee, you know, and my good friend  
1542 from New York.

1543 But I want my good friend on the minority to know that  
1544 those of us in the majority, we are not postulating these  
1545 bills just because we can. We are trying to address real  
1546 problems. My friend from Oregon has got a real problem. The  
1547 forest products industry in his State has been decimated by  
1548 some of these environmental rules that have already been  
1549 promulgated.

1550 In my Congressional district yesterday, because of  
1551 proposed cross-state air pollution rule that has been  
1552 proposed by the EPA that Texas was not even included in until  
1553 they put the final rule out, the major power generator in our  
1554 State announced layoffs of 500 people. The cement industry  
1555 rule that some of this legislation today before us affects, I  
1556 have got three cements plants in my district and in all  
1557 probability if the proposed EPA rule goes into effect, 200 to  
1558 300 jobs will be lost there. Those are real jobs. That is

1559 not some hypothetical, preventable premature death 5 years  
1560 from now. Those are real jobs.

1561 Now, every member of this committee on the majority side  
1562 that was in Congress in the early 1990s voted for the Clean  
1563 Air Act Amendments. I was a sponsor of it under Chairman  
1564 Dingell's direction, and I think you were Health Subcommittee  
1565 chairman at that time. You know, there is such a thing as  
1566 law of diminishing returns. If you have never regulated  
1567 anything, the first time you put a rule in, you are going to  
1568 get a huge benefit, or you should. The second time you  
1569 tighten it, you should get some benefit. We are now down in  
1570 the Clean Air Act on some of these proposed rules that by  
1571 their own admission the quantitative benefit is fairly small,  
1572 and it is justified by the same old tired methodology that  
1573 you are somehow going this minute increase or decrease in  
1574 emissions is going to have a huge health benefit. That just  
1575 defies common sense.

1576 And so these particular bills today are saying let us  
1577 take a step back, let us give them a little bit more time,  
1578 let us ask them to go back and really look at them, and if  
1579 they still want to do a rule, let us do a rule that can  
1580 actually be implemented with real technology in the real  
1581 world. That is not, you know, some draconian gutting of the  
1582 existing law.

1583           So, you know, when Mr. Walden starts talking about real-  
1584 world effects, I think he is being sincere. I also think  
1585 former chairman and current Ranking Member Waxman is being  
1586 sincere in that he really wants us to take a deep breath and  
1587 think about these things, but we are proposing them because  
1588 we think there are real-world consequences if we just let the  
1589 EPA go unchecked and we are trying to, as Congress's purpose  
1590 is, you know, clarify the laws that we passed in the past.

1591           With that, I oppose the Rush amendment and yield back,  
1592 Mr. Chairman.

1593           Mr. {Whitfield.} The gentleman yields back his time.  
1594 Is there further discussion on the amendment?

1595           Mr. {Bilbray.} Mr. Chairman.

1596           Mr. {Whitfield.} For what purpose does the gentleman  
1597 form California seek--

1598           Mr. {Bilbray.} To strike the last word.

1599           Mr. {Whitfield.} The gentleman is recognized for 5  
1600 minutes.

1601           Mr. {Bilbray.} Mr. Chairman, I am sorry the gentleman  
1602 from California, you know, personalized this issue, but let  
1603 me just tell you, my background is not at making the  
1604 payrolls. My background is being the regulatory agency that  
1605 puts the burden on the business community, and I sure do not  
1606 understand what it is going to take to get some people in

1607 this town to understand the cumulative impact on the ability  
1608 or the legality of people staying in business in this country  
1609 is what we are talking about.

1610         You know, the ranking member ought to look at just in  
1611 California--let me give you two examples in California. This  
1612 isn't just businesses but this is environmental strategies  
1613 that are being blocked by government regulation. Number one,  
1614 the scientists who are paid for by the State of California  
1615 worked in Scripps Institution, in a California institution,  
1616 paid for with taxpayers' money. When they developed a green  
1617 fuel that could help reduce greenhouse gases, they had to  
1618 leave the State of California to be able to create a legal  
1619 vehicle to produce the green fuel. They went to New Mexico.  
1620 Why? Because under California SEQUA, they could not legally  
1621 site the production facility within a decade. This isn't  
1622 people who want to destroy the environment or kill children.  
1623 These are people who want to save the environment but because  
1624 the cumulative impact of regulatory oversight, it has blocked  
1625 it.

1626         When the Aptera car, a 200-miles-to-the-gallon car, is  
1627 asking for a grant from the Obama Administration to go into  
1628 production, the Obama Administration made the condition of  
1629 the production of that car was not to be done in the State of  
1630 California because of the regulatory obstructionism of the

1631 State of California. They were required to get the federal  
1632 grant for a 200-mile-a-gallon car and had to leave the State  
1633 because of the government obstructionism.

1634         So anybody that thinks that there is not a huge impact  
1635 of government regulation, don't talk to the business guy,  
1636 come to those of us who have actually been in those  
1637 regulatory agencies and seen the impact. And so I just want  
1638 to point out that let us admit there is a huge impact on the  
1639 private sector to be able to create jobs and let us admit  
1640 that the crisis facing America today is not the emissions  
1641 from a boiler plant or from a cement factory. The crisis is  
1642 out there facing the average working person who desperately  
1643 needs their government to get the hell out of the way and  
1644 allow the private sector to provide them a job. And if we  
1645 are not brave enough to admit that government is a part of  
1646 the problem, if we are not brave enough to confront the fact  
1647 that we need to change the way government does oversight on  
1648 regulatory agencies to create those opportunities for the  
1649 public, then we are not worth staying here and saying we  
1650 represent the public.

1651         We can implement environmental strategies but priorities  
1652 have to be made, and this bill reflects the crisis that the  
1653 American people are facing, and especially the blue collar,  
1654 and the environmental risk may be higher among the working

1655 class when we don't clean up the problem but the economic  
1656 disaster rests on the working class much more than those who  
1657 are wealthy. And so I think this amendment is well  
1658 intentioned but inappropriate at this time, and I yield back.

1659 Mr. {Rush.} Would the gentleman yield?

1660 Mr. {Bilbray.} Yes, I would yield

1661 Mr. {Rush.} I hear your arguments, and on the surface,  
1662 your arguments seem to make some sense, but this is the wrong  
1663 bill, the wrong time, the wrong place for us to consider jobs  
1664 in that real jobs and jobs that would really have an effect.  
1665 If in fact we are concerned, you are concerned about job  
1666 creation, if you are concerned about job creation in the  
1667 cement industry, then it seems as though you would be waving  
1668 the flag, you would be rallying around the American Jobs Act  
1669 to increase--

1670 Mr. {Bilbray.} Reclaiming my time. The ranking member  
1671 has got to recognize there is more than writing blank checks  
1672 and borrowing money that we need to do. We need to get the--

1673 Mr. {Rush.} Will the gentleman yield?

1674 Mr. {Bilbray.} Reclaiming my time--

1675 Mr. {Rush.} Will the gentleman yield?

1676 Mr. {Whitfield.} The gentleman from California has the  
1677 time.

1678 Mr. {Bilbray.} Mr. Chairman, even the President

1679 admitted that what he thought was shovel ready was not ready  
1680 and the reason why it was not ready was because the  
1681 government had not given the permits to allow people to  
1682 produce the jobs, and even the President admitted he  
1683 underestimated that impact.

1684 Mr. {Whitfield.} The gentleman's time is expired.

1685 If there is no further discussion, the vote will occur  
1686 on the Rush amendment. All those in favor shall signify by  
1687 saying aye. All those opposed, no. In the opinion of the  
1688 chair, the nos have it. The amendment is not agreed to.

1689 Are there any further amendments to 2681? Okay. Well,  
1690 at this time the vote will now occur on the legislation,  
1691 2681. All those that oppose the legislation, no--you all got  
1692 me so confused right now that I did it the opposite of what I  
1693 was supposed to do.

1694 So let us do H.R. 2681 once again. All those in favor  
1695 of this legislation signify by saying aye. All those opposed  
1696 to this legislation signify by saying no. In the opinion of  
1697 the chair, the ayes have it. So the legislation is agreed  
1698 to.

|

1699 H.R. 2250

1700 Mr. {Whitfield.} At this time the chair would call up

1701 H.R. 2250 and ask the clerk to report.

1702 The {Clerk.} H.R. 2250, to provide additional time for

1703 the Administrator of the Environmental Protection Agency--

1704 [H.R. 2250 follows:]

1705 \*\*\*\*\* INSERT 3 \*\*\*\*\*

|  
1706 Mr. {Whitfield.} Without objection, the first reading  
1707 of the bill is dispensed with and the bill will be open for  
1708 amendment at any point. So ordered.

1709 In keeping with the chairman's policy, are there any  
1710 bipartisan amendments?

1711 Mr. {Rush.} Mr. Chairman?

1712 Mr. {Whitfield.} Are there any amendments at all?

1713 Mr. {Rush.} Mr. Chairman, I have an amendment that  
1714 again I am eternally optimistic that ultimately will be a  
1715 bipartisan amendment that will pass out of this subcommittee,  
1716 but I have an amendment at the desk.

1717 Mr. {Whitfield.} Will the clerk report the amendment?

1718 The {Clerk.} Which number, Mr. Rush?

1719 Mr. {Whitfield.} What is the number of the amendment?

1720 Mr. {Rush.} It is an amendment to 2250. It is the only  
1721 amendment that I have to 2250.

1722 The {Clerk.} Amendment to H.R. 2250 offered by Mr.  
1723 Rush.

1724 [The amendment follows:]

1725 \*\*\*\*\* INSERT 4 \*\*\*\*\*

|  
1726           Mr. {Whitfield.} Without objection, the first reading  
1727 of the amendment is dispensed with, and the gentleman is  
1728 recognized for 5 minutes to speak in support of his  
1729 amendment.

1730           Mr. {Rush.} Thank you, Mr. Chairman.

1731           Mr. Chairman, boilers and incinerators are one of the  
1732 largest industrial sources of mercury pollution and other  
1733 hazardous air pollutants in the United States. That is why  
1734 the Clean Air Act requires the EPA to set emission limits for  
1735 these facilities based on how much pollution they can reduce  
1736 using available technology. This is a prudent approach and  
1737 one that has worked well. The EPA has significantly reduced  
1738 toxic air pollution from numerous industrial sectors in the  
1739 past 2 decades. Until recently, boilers and incinerators  
1740 have had a free pass. This year, the EPA finally took action  
1741 to require these facilities to reduce their emissions of  
1742 mercury and other toxic pollutants that cause cancer.

1743           This bill stops those public health protections in their  
1744 tracks. The bill also rewrites the way EPA sets emission  
1745 limits for toxic pollution and makes it harder to achieve  
1746 meaningful reductions.

1747           Section 5 of the bill is of particular concern and puts  
1748 new constraints and conditions on how and when EPA can set

1749 specific emission standards for toxic pollution. It also  
1750 requires the EPA to select the least burdensome option when  
1751 looking at how to cut pollution, but the bill doesn't explain  
1752 what this means. Does this mean that because work practice  
1753 standards are the last stringent regulatory option, that is  
1754 all that the EPA can ever require or does it mean that where  
1755 the Clean Air Act provides discretion the agency should  
1756 choose workplace practice standards? These are two distinct  
1757 legal interpretations of the language and it is unclear what  
1758 this bill would require.

1759         At the hearing last week, Gina McCarthy from EPA  
1760 testified that this section is unclear and could raise  
1761 ``legal uncertainty'' and I agree. I am almost concerned  
1762 that it could do more than create new litigation. I fear  
1763 this language could require the EPA to lower the bar for  
1764 reduction of toxic air pollution. Rather than require the  
1765 most pollution facilities to do more to reduce their toxic  
1766 emissions, EPA could just require everyone to do less. From  
1767 that standpoint, the standpoint of public health, that is  
1768 totally unacceptable.

1769         This amendment clarifies that section 5 of the bill will  
1770 not gut the Clean Air Act. It is not intended to gut the  
1771 Clean Air Act and it will never gut the Clean Air Act. It  
1772 simply states that the language in this section supplements

1773 but does not replace the requirement that EPA sets specific  
1774 emissions limits based on the best technology on the market  
1775 unless such limits are not feasible. This amendment will  
1776 help create the certainty that industry says it wants and  
1777 ensures that the EPA can do what it is supposed to, and that  
1778 is to protect the public health.

1779 Mr. Chairman, I would urge all my colleagues to support  
1780 this bipartisan amendment.

1781 Mr. {Whitfield.} The gentleman from Virginia, Mr.  
1782 Griffith, is recognized for 5 minutes to speak on the  
1783 amendment.

1784 Mr. {Griffith.} Thank you, Mr. Chairman.

1785 I would ask everyone to vote against the amendment. I  
1786 believe the amendment would create confusion for the EPA  
1787 because the agency would have to choose between existing  
1788 language in the statute and Congress's clarifications in this  
1789 bill that the standards being set are achievable in practice  
1790 by real-world facilities.

1791 In my opening statement, I referenced the actual  
1792 language in the code that referenced the 12 percent. The  
1793 original standard was, you have to look at what 12 percent of  
1794 the industry is doing in order to be achievable and you can  
1795 go lower than that. The power was given to the Administrator  
1796 to go lower than that, but what the Administrator and the EPA

1797 have done in this case and in the preceding bill is, they  
1798 have actually gone way below the 12 percent that was  
1799 anticipated by Congress. Nobody wanted litigation over the  
1800 exact percentage, but we ended up with a situation where we  
1801 are at about 2 percent of the industry that may be able to  
1802 meet some of this. They may not be able to meet all of it,  
1803 as was previously stated, and many of the arguments are the  
1804 same on this amendment as the preceding amendment on the  
1805 previous bill because what we haven't said, the cause of what  
1806 we believe to be misinterpretation by the courts, the EPA is  
1807 following a pollutant-by-pollutant approach in setting  
1808 standards that cannot be met by real-world boilers.

1809         This is sometimes referred to as the Frankenboiler or  
1810 the Frankenplant or the Franken MACT situation, but we have  
1811 heard from employer after employer that says they cannot meet  
1812 these standards without laying off workers for a period of  
1813 time or without closing facilities, and we believe that both  
1814 with the boiler MACT and with the preceding legislation,  
1815 about 20 percent if we don't take action, about 20 percent of  
1816 the workforce in those areas will be impacted considerably if  
1817 not having the jobs lost, and in these economic times, we  
1818 clearly all want to make sure that we have sound science and  
1819 health but we also want to have jobs.

1820         And it is interesting that the health issue always comes

1821 up because predominantly when you look at this, there is an  
1822 extrapolation the models just don't fit. Representative  
1823 Barton touched on that. The models don't fit with the EPA is  
1824 saying so we are going to sacrifice jobs. We are not willing  
1825 to take the time to make sure we get the rules right if we  
1826 adopt this amendment, and I believe, Mr. Chairman, that we  
1827 should not adopt this amendment, that what we have is clear.  
1828 I made that point in the testimony last week that when you  
1829 read the clear meaning of the words in Section 5, it is  
1830 pretty clear what it says, and I believe that helps business  
1831 and helps us come with real-world solutions to real-world  
1832 problems that are in fact achievable, and I would ask that  
1833 everyone vote no on the Rush amendment.

1834 Mr. {Whitfield.} The gentleman from California is  
1835 recognized for 5 minutes to speak on the amendment.

1836 Mr. {Waxman.} Thank you, Mr. Chairman.

1837 I support the Rush amendment. Congress created Section  
1838 112 of the Clean Air Act to direct EPA to control toxic air  
1839 pollution using readily available technology. This section  
1840 requires EPA to develop emission limits for power plants,  
1841 boilers, cement kilns and other facilities that release  
1842 mercury, dioxins and other dangerous chemicals into the air.

1843 The Clean Air Act takes a very prudent approach. It  
1844 says that EPA should set emission limits based on the

1845 emission levels already being achieved by similar facilities.  
1846 These regulations are known as the maximum achievable control  
1847 technology, or MACT, standards. For existing sources, EPA  
1848 bases the emissions standards on the average emissions  
1849 achieved by the best-performing 12 percent of facilities, not  
1850 the top 1 or 2 percent, the top 12. Section 5 of this bill  
1851 has the potential to gut these requirements. I say  
1852 ``potential'' because the intent of the language is unclear.

1853         Section 5 of the bill requires EPA to set emissions  
1854 standards that can be met under actual operating conditions  
1855 consistently and concurrently with emissions standards for  
1856 all other air pollutants. It also requires EPA to select the  
1857 least burdensome regulatory alternative, even if a more  
1858 stringent standard is feasible, and would provide greater  
1859 public health protection. At the hearing last week, Gina  
1860 McCarthy from EPA testified that this section could raise  
1861 legal uncertainty. She warned that industry could argue that  
1862 this new language modifies or supersedes provisions of the  
1863 Clean Air Act designed to achieve maximum reductions in toxic  
1864 air pollution.

1865         John Walke from the Natural Resources Defense Council  
1866 was more direct in his testimony. He stated that Section 5  
1867 would require EPA to cater to the lowest common denominator  
1868 and set emissions standards based on the most-polluting

1869 boilers or incinerators rather than the best-performing  
1870 facilities. So at best, this section creates legal  
1871 uncertainty and more litigation. At worst, it guts the core  
1872 of the Clean Air Act.

1873         The Rush amendment clarifies the intention of this  
1874 language. It simply states that the language in this section  
1875 supplements but does not replace the requirement that EPA set  
1876 numeric emissions limits based on the best-performing  
1877 emissions-reduction technology unless such limits are not  
1878 feasible. This amendment would help create the certainty  
1879 that industry says it wants and avoid additional litigation  
1880 about Congressional intent.

1881         As I understand Mr. Griffith's comments, he seemed to be  
1882 concerned about the standards being set for pollutant by  
1883 pollutant and then taking the maximum achievable control  
1884 technology for these pollutants rather than the best plants.  
1885 Well, that could mean that they are good on one pollutant but  
1886 bad on another, and we want to make sure that when they take  
1887 the efforts to meet the standards that are already being  
1888 achieved and not let them weaken what they are doing or  
1889 weaken what they should be doing to protect another pollutant  
1890 area.

1891         This is what the Clean Air Act says. The matter was  
1892 litigated. One side lost. The side that lost has come in

1893 and asked us to remedy their loss but in remedying their  
1894 loss, I think it is going to be a situation where we end up  
1895 with more uncertainty, more litigation. Now, that could be  
1896 good for the industry that doesn't want to do anything but it  
1897 is not good for the purposes of the Clean Air Act, which is  
1898 to control these pollutants in a prudent, reasonable,  
1899 commonsense way so that we can achieve what is good for  
1900 industry as well as protect the public from some very toxic  
1901 pollutants.

1902         So I would urge support for the Rush amendment. It will  
1903 provide the certainty that industry says it wants, avoid  
1904 additional litigation about Congressional intent, and I would  
1905 urge my colleagues to support it. I yield back the time.

1906         Mr. {Whitfield.} The chair recognizes himself for 5  
1907 minutes to speak against the amendment.

1908         Instead of clarifying, I agree with Mr. Griffith, this  
1909 amendment would create more ambiguity because of the fact you  
1910 would have to choose between the existing language of the  
1911 bill and the language of this amendment. Also, the Clean Air  
1912 Act was last adopted in 1990. A lot of things have changed  
1913 since then, and the legislative process is about correcting  
1914 problems and there a lot of problems we see with the Clean  
1915 Air Act today.

1916         This legislation is not that complicated. It simply

1917 gives the EPA 15 months to re-propose and finalize the rules.  
1918 It extends the compliance period on the boiler section of  
1919 this bill from 3 years to 5 years. The incinerator  
1920 regulations are already at 5 years so there is not anything  
1921 particularly unusual about extending the opportunity of  
1922 compliance to the boiler to 5 years. We are also simply  
1923 addressing the change by EPA in the definition of solid  
1924 waste, which had not been done before. We are trying to  
1925 correct that problem. And then we are also trying to address  
1926 this so-called Frankenplant issue in which the EPA is  
1927 changing the way that they deal with that.

1928         So I think this legislation is certainly not radical. I  
1929 think it is reasonable, and for that reason, I would speak in  
1930 opposition to the Rush amendment and ask that it not be  
1931 adopted.

1932         Does anyone seek recognition? The question is now on  
1933 the Rush amendment. Those in favor will signify by saying  
1934 aye. Those opposed signify by saying nay. In the opinion of  
1935 the chair, the nays have it and the amendment is not agreed  
1936 to.

1937         Are there additional amendments to H.R. 2250? For what  
1938 purpose does the gentleman from Washington--

1939         Mr. {Inslee.} I have an amendment.

1940         Mr. {Whitfield.} The gentleman has an amendment at the

1941 desk. Will the clerk report the amendment?

1942 The {Clerk.} Amendment to H.R. 2250 offered by Mr.

1943 Inslee of Washington.

1944 [The amendment follows:]

1945 \*\*\*\*\* INSERT 5 \*\*\*\*\*

|  
1946           Mr. {Whitfield.} Without objection, the first reading  
1947 of the amendment is dispensed with, and the gentleman is  
1948 recognized for 5 minutes to speak in favor of his amendment.

1949           Mr. {Inslee.} Thank you.

1950           I am offering this amendment, which I think makes some  
1951 reasonable improvements to the circumstances that the biomass  
1952 industry faces under these proposed rules.

1953           This amendment simply would give EPA until next April to  
1954 review the comments submitted by the public and industry and  
1955 work towards revisions that will make the rule more workable.  
1956 The EPA has received hundreds of these comments and I think  
1957 recognizes that this would be beneficial to be able to digest  
1958 and incorporate all of the public's advice considering this  
1959 complicated rule. It is a reasonable approach to give the  
1960 EPA more time to consider issues impacting these relevant  
1961 industries. They have said they need more time to consider  
1962 issues relating to major source emissions from industrial,  
1963 commercial and institution boilers and process heaters. The  
1964 amendment would not apply to the fourth characterized  
1965 situations. It would give them time to better establish  
1966 rules with commercial and industry solid waste incineration  
1967 units, which I believe need a closer review because they  
1968 should not be the same rules that regulate biomass boilers.

1969           But the important thing about our approach under this  
1970 amendment is it would in fact have a deadline for action by  
1971 EPA, and I think this is very important. Under the existing  
1972 bill, this puts Americans' health into the netherland of  
1973 perhaps never being dealt with, and we know that that can  
1974 happen, and this would leave the health of Americans at the  
1975 tender mercies of whoever ends up being in the White House in  
1976 the next 4 years or afterwards, and that is something we have  
1977 learned not to be entirely confident that science would be  
1978 followed. In fact, in this upcoming debate, there is an  
1979 issue whether or not there is going to be candidates on both  
1980 sides that want to follow good science rather than politics.

1981           So I think it is very important to maintain some  
1982 deadline while at the same time recognizing the complexity of  
1983 this rule and making sure that the public's interest can be  
1984 accommodated. Thank you.

1985           Mr. {Whitfield.} Thank you.

1986           Does anyone seek recognition to speak in opposition to  
1987 the amendment? The gentleman from Virginia, Mr. Griffith, is  
1988 recognized for 5 minutes.

1989           Mr. {Griffith.} Mr. Chairman, looking at the amendment,  
1990 I am trying to figure out exactly all of what it does, but I  
1991 believe that what it does it that it inserts the date of  
1992 April 13, 2012, for the enactment or for the final

1993 promulgation of the rules. It then goes on to strike some  
1994 other things but that does not, I believe, give the EPA  
1995 sufficient time because they originally asked for 15 months,  
1996 and even though the 15 months has been running from their  
1997 testimony last week on part of the bill, it has not been  
1998 running, even if you just limit it to the 15 months, it has  
1999 not been running, Mr. Chairman, on the other parts of the  
2000 bill, in which case the EPA would have to start that section  
2001 up, the reports and studies on that section would have to  
2002 start anew and their original request for that was 15 months.  
2003 Putting a date of no later than April 13, 2012, does not, I  
2004 believe, comply in toto. It may in part of what the EPA says  
2005 they need. It does not in toto apply to what the EPA said  
2006 they need.

2007 Further, as I stated in my opening statement and have  
2008 said repeatedly, I believe we need to make sure we get this  
2009 right, that it doesn't hurt us to take more time to make sure  
2010 we get these rules right. Just as I said in my opening, you  
2011 know, if we don't get the rules right, the money that these  
2012 institutions are going to have to spend on boilers, et  
2013 cetera, are not reversible. If we then come back in later  
2014 and decide that we have to change those rules again and the  
2015 jobs that are lost are also not reversible, and there are a  
2016 lot of places who feel that they need additional time to

2017 study and work on this, and I don't believe that these  
2018 amendments do it and therefore I would request that the  
2019 amendment offered by the gentleman from Washington be  
2020 rejected.

2021 Mr. {Waxman.} Mr. Chairman?

2022 Mr. {Whitfield.} For what purpose does the gentleman  
2023 from California seek recognition?

2024 Mr. {Waxman.} To speak in favor of the amendment.

2025 Mr. {Whitfield.} The gentleman is recognized for 5  
2026 minutes.

2027 Mr. {Waxman.} I support Mr. Inslee's amendment, which  
2028 addresses two of my many concerns with this bill. This  
2029 amendment gives EPA a deadline for issuing the rules. The  
2030 Clean Air Act deadline for these rules was 11 years ago in  
2031 the year 2000. These rules are 11 years late despite a  
2032 statutory deadline that can be enforced in court after  
2033 diligent enforcement by communities suffering from air  
2034 toxics.

2035 What in this history suggests that we will achieve these  
2036 pollution reductions by prohibiting EPA from issuing the  
2037 rules during this presidential term and then eliminating any  
2038 statutory deadline from ever issuing the rules? The boiler  
2039 rule bill before us virtually guarantees we won't see these  
2040 reductions for years and likely decades, and make no mistake,

2041 toxic air pollution harms Americans and especially infants  
2042 and children. Every day across America, parents are forced  
2043 to watch helplessly as their children slowly die from cancer.  
2044 Some of those cancers are caused by entirely preventable air  
2045 pollution. How can we stand by and let this continue  
2046 unabated?

2047         We know mercury damages the developing neurological  
2048 system. At high levels, it literally makes adults who work  
2049 with mercury as mad as hatters. Exposure to mercury at low  
2050 levels damages the development of babies' brains, even in the  
2051 womb. Each year in this country, roughly 60,000 babies are  
2052 exposed to harmful levels of mercury yet the bills before us  
2053 today would indefinitely delay any requirement to clean up  
2054 two of the three largest sources of mercury pollution in this  
2055 country. That is shameful.

2056         This amendment also leaves the so-called area source  
2057 rule for smaller boilers in place. According to EPA, no one  
2058 petitioned them to stay and replace that rule. For the vast  
2059 majority of area sources, the EPA regulation now in effect  
2060 simply requires the owners to tune up the boilers each year  
2061 or every other year. That will save fuel and reduce  
2062 pollution. I can't imagine a more reasonable or less  
2063 burdensome requirement. There is no reason to nullify these  
2064 rules, and that is what H.R. 2250 does.

2065           This amendment wouldn't fix all the other problems in  
2066 this bill. It would allow boilers to continue to emit toxic  
2067 air pollution unabated but it says that we need regulations  
2068 to reduce toxic air pollution, and we expect the EPA to issue  
2069 the revised rules by a date certain, and it gives EPA all the  
2070 time they want to get the rules right.

2071           I urge my colleagues to support this commonsense  
2072 amendment, and I yield back the balance of my time.

2073           Mr. {Whitfield.} The chair recognizes himself for 5  
2074 minutes to speak in opposition to the amendment.

2075           We have heard a lot of discussion today that these  
2076 regulations were expected to be finalized many years ago, and  
2077 the only reason I might say these rules are not currently in  
2078 place is because of lawsuits from environmental groups.  
2079 EPA's own schedule called for the agency to issue maximum  
2080 achievable control technology rules for boilers in 2004,  
2081 which the agency did, and sources were on track to comply,  
2082 but environmentalists challenged the rules and they were  
2083 vacated in 2007. Now EPA has proposed new boiler rules, and  
2084 environmentalists have again challenged those rules.

2085           So in my view, this legislation, H.R. 2250, will provide  
2086 an orderly path toward the finalizing, achievable, defensible  
2087 and protective rules for boilers that can be implemented.  
2088 And so for that reason, I would oppose the amendment and ask

2089 other members not to support it. And with that, I would  
2090 yield back the balance of my time.

2091 Are there additional people seeking recognition to speak  
2092 in favor of the amendment or against the amendment? If there  
2093 is no further discussion, the vote will occur on the  
2094 amendment. All those in favor shall signify by saying aye.  
2095 All those opposed, no. In the opinion of the chair, the nos  
2096 have it and the amendment is not agreed to.

2097 Are there further amendments for H.R. 2250? If there  
2098 are no further amendments, the question now occurs on  
2099 favorably reporting H.R. 2250. All those in favor shall  
2100 signify by saying aye. All those opposed, no. In the  
2101 opinion of the chair, the ayes have it, and the bill is  
2102 favorably reported.

2103 And without objection, the staff is authorized to make  
2104 technical and conforming changes to the bill approved by the  
2105 subcommittee today. So ordered.

2106 The subcommittee stands adjourned.

2107 [Whereupon, at 12:25 p.m., the subcommittee was  
2108 adjourned.]