



September 25, 2015

TO: Members, Committee on Energy and Commerce
FROM: Committee Majority Staff
RE: Committee on Energy and Commerce Markup

I. INTRODUCTION

The Committee on Energy and Commerce will meet in open markup session on September 29 and September 30, 2015, in 2123 Rayburn House Office Building.

On Tuesday, September 29 at 4:00 p.m., the Committee will convene for opening statements only. The Committee will reconvene on Wednesday, September 30 at 10:00 a.m., to consider the following:

- H.R. 8, the North American Energy Security and Infrastructure Act of 2015;
- H.R. 3242, Child Nicotine Poisoning Prevention Act of 2015; and
- Proposed Matters for Inclusion in Reconciliation Recommendations.

In keeping with Chairman Upton's announced policy, Members must submit any amendments they may have two hours before they are offered during this markup. Members may submit amendments by email to peter.kielty@mail.house.gov. Any information with respect to an amendment's parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

II. EXPLANATION OF LEGISLATION

A. H.R. 8, North American Energy Security and Infrastructure Act of 2015

TITLE I—MODERNIZING AND PROTECTING INFRASTRUCTURE

Sec. 1101. FERC Process Coordination:

This section would reinforce the Federal Energy Regulatory Commission's (FERC) role as the lead agency for siting interstate natural gas pipelines. This section would require FERC to identify all agencies considering an aspect of an application and set the schedule for review, including a deadline for a final decision. To ensure that timely decisions are made and that the responsibilities of each Federal and State agency are met when making decisions, FERC would be required to coordinate its efforts and make a recommendation on the scope of the

environmental review. Cooperating agencies would be directed to carry out reviews concurrently, identifying any issues of concern that may delay or prevent an agency from meeting the schedule established by FERC, and giving deference to FERC on the scope of the environmental review when appropriate and in accordance with applicable Federal law. If issues arise, the Commission could forward them to the heads of the relevant agency for resolution. In cases where there is a failure to meet the schedule that is established by FERC, the head of the relevant agency would notify Congress and set forth a recommended implementation plan to ensure a final decision reached. This section also would direct FERC to track, and make available to the public on its website, information related to the review of applications requiring multiple Federal authorizations.

Sec. 1102. Resolving Environmental and Grid Reliability Conflicts:

This section would resolve conflicts between the Federal Power Act and environmental laws and regulations in order to avoid forcing electric generators from choosing between complying with an emergency order from the Department of Energy (DOE) or violating an environmental obligation.

Sec. 1103. Emergency Preparedness for Energy Supply Disruptions:

This section would include the finding that recent natural disasters have underscored the importance of having resilient oil and natural gas infrastructure and effective ways for industry and government to communicate to address energy supply disruptions. This section also would direct the Secretary of Energy to develop and adopt procedures to enhance communication and coordination between the DOE, Federal partners, State and local government, and the private sector to improve emergency response and recovery.

Sec. 1104. Critical Electric Infrastructure Security:

This section would establish a new section 215A of the Federal Power Act that:

- Provides the Secretary of Energy the authority to address grid security emergencies if the President provides a written directive or determination identifying a grid security emergency. The Secretary is authorized to take emergency measures to protect the bulk power system or defense critical electric infrastructure, including ordering critical electric infrastructure owners and operators to take appropriate actions, with such measures to expire no later than fifteen days from issuance.
- Facilitates the protection and voluntary sharing of critical electric infrastructure information between private sector asset owners and the Federal government by: (1) exempting designated Critical Electric Infrastructure Information from certain Federal and State disclosure laws; 2) requiring FERC to facilitate voluntary information sharing between Federal, State, local and tribal authorities, the Electric Reliability Organization, regional entities, and owners, operators and users of the bulk-power system in the U.S.; and 3) establishing sanctions for the unauthorized disclosure of shared information.

Sec. 1105. Strategic Transformer Reserve:

This section would require DOE to submit a plan to Congress evaluating the feasibility of establishing a Strategic Transformer Reserve for the storage, in strategically-located facilities, of spare large power transformers and other critical equipment in sufficient numbers to temporarily replace critically damaged large power transformers. Strategically-located spare large power transformers will diminish the vulnerability of the United States to multiple risks facing electric grid reliability, including physical attack, cyber-attack, electromagnetic pulse, geomagnetic disturbances, severe weather, and seismic events.

Sec. 1106. Cyber Sense:

This section would direct DOE to establish a voluntary Cyber Sense program to identify and promote cyber-secure products and technologies intended for use in the bulk-power system, including products relating to industrial control systems, such as supervisory control and data acquisition systems.

Sec. 1107. State Coverage and Consideration of PURPA Standards for Electric Utilities:

This section would direct electric utilities and State public utility commissions to consider:

- Increasing the utilization of, and cost recovery for, resiliency-related technologies designed to improve the resilience of electric infrastructure, mitigate power outages, continue delivery of vital services, and maintain the flow of power to facilities critical to public health, safety, and welfare;
- Promoting investments in advanced energy analytics technology for the purposes of realizing operational efficiencies, cost savings, enhanced energy management and customer engagement, improvements in system reliability, safety, and cybersecurity, or other benefits to ratepayers; and
- Adopting or modifying policies to ensure the incorporation of sufficient reliable generation into integrated resource plans to assure the reliable availability of electric energy over a ten-year planning period.

TITLE II—21st CENTURY WORKFORCE

Sec. 2101. Energy and Manufacturing Workforce Development:

This section would direct the Secretary of Energy to establish a comprehensive program to improve education and training for energy and manufacturing-related jobs. This section would direct the Secretary to collaborate with representatives from the energy and manufacturing industry to identify the areas of highest need and develop guidelines for the skills necessary to enter the workforce. The Secretary also would be directed to provide direct assistance to schools, community colleges, workforce development organizations, non-profit organizations,

labor organizations, apprenticeship programs, and minority serving institutions to carry out the program established in this section. This section also would provide special consideration for increasing outreach to employers and job trainers preparing displaced and unemployed energy and manufacturing workers to re-enter the workforce.

TITLE III—ENERGY SECURITY AND DIPLOMACY

Sec. 3101. Sense of Congress:

This section would provide several findings, including: 1) North America's energy revolution has significantly enhanced energy security in the United States, and fundamentally changed the Nation's energy future from that of scarcity to abundance; 2) North America's energy abundance has increased global energy supplies and reduced the price of energy for consumers in the United States and abroad; 3) allies and trading partners of the United States, including in Europe and Asia, are seeking stable and affordable energy supplies from North America to enhance their energy security; 4) the United States has an opportunity to promote greater stability and affordability of energy supplies for its allies and trading partners through a more integrated, secure, and competitive North American energy system; and 5) the United States also has an opportunity to promote such objectives through greater Federal agency coordination relating to regulations or agency actions that significantly affect the supply, distribution, or use of energy.

Sec. 3102. Energy Security Valuation:

This section would direct the Secretary of Energy, in collaboration with the Secretary of State, to establish U.S. energy security valuation methods to ensure that energy-related actions that significantly affect the supply, distribution, or use of energy are evaluated with respect to their potential impact on energy security, including their impact on consumers and the economy; energy supply, diversity and resiliency; well-functioning and competitive energy markets; United States trade balance; and national security objectives.

Sec. 3103. North American Energy Security Plan:

This section would direct the Secretary of Energy, in collaboration with the Secretary of State, to report to Congress with a plan to improve planning and coordination with Canada and Mexico to enhance energy integration, strengthen North American energy security, and promote efficiencies; and improve collaboration with Caribbean and Central American partners on energy security.

Sec. 3104. Collective Energy Security:

This section would direct the Secretary of Energy, in collaboration with the Secretary of State, to convene at least one Trans-Atlantic and one Trans-Pacific forum to foster dialogue among the governments of U.S. allies and trading partners, independent experts, and industry representatives with the goal to promote energy security.

Sec. 3105. Strategic Petroleum Reserve Mission Readiness Plan:

In seeking to ensure that our strategic stockpiles of petroleum are kept safely and readily accessible in times of national emergency, this section would direct DOE to conduct a long-range strategic review to specify the near and long-term roles of the Strategic Petroleum Reserve and recommend an action plan to achieve the optimal 1) capacity, location, and composition of petroleum products in the Reserve; and, 2) storage and distributional capabilities.

TITLE IV—ENERGY EFFICIENCY AND ACCOUNTABILITY

SUBTITLE A—ENERGY EFFICIENCY

CHAPTER 1—FEDERAL AGENCY ENERGY EFFICIENCY

Sec. 4111. Energy-Efficient and Energy-Saving Information Technologies:

This section would require Federal agencies to coordinate with the Office of Management and Budget (OMB), DOE, and the Environmental Protection Agency (EPA) to develop an implementation strategy – including best practices and measurement and verification techniques – for the maintenance, purchase, and use of energy-efficient and energy saving information technologies. OMB would be required to track and report on each agency’s progress.

Sec. 4112. Energy Efficient Data Centers:

This section would improve the energy efficiency of Federal data centers by, among other items, requiring DOE to update a 2007 report on data center energy efficiency and maintain a data center energy practitioner certification program. DOE also would establish an open data initiative to help share best practices and support further innovation, and develop a metric that measures data center energy efficiency.

Sec. 4113. Report on Energy and Water Savings Potential from Thermal Insulation:

This section would direct DOE to submit a report within one year on the impact of thermal insulation on both energy and water use systems for potable hot and chilled water in Federal buildings and on the return on investment of installing the insulation. The report must include: (1) an analysis based on the cost of municipal or regional water for delivered water and the avoided cost of new water; and (2) a summary of energy and water savings, including short-term and long-term (twenty years) projections of such savings.

Sec. 4114. Federal Purchase Requirement:

This section would expand the definition of “renewable energy” in section 203 of the Energy Policy Act of 2005 to include thermal energy and qualified waste heat resources. The section also would modify the term “municipal solid waste” by excluding certain commonly recycled paper.

CHAPTER 2—ENERGY EFFICIENT TECHNOLOGY AND MANUFACTURING

Sec. 4121. Inclusion of Smart Grid Capability on Energy Guide Labels:

This section would direct the Federal Trade Commission to initiate a rulemaking to develop Energy Guide labels that promote the smart grid capabilities of certain products.

Sec. 4122. Voluntary Verification Programs for Air Conditioning, Furnace, Boiler, Heat Pump, and Water Heater Products:

This section requires the DOE to recognize voluntary verification programs for air conditioning, furnace, boiler, heat pump, and water heating products to demonstrate compliance with DOE energy efficiency and conservation standards and the Energy Star program.

Sec. 4123. Facilitating Consensus Furnace Standards:

This section would provide gas furnace stakeholders the opportunity to continue negotiations to facilitate the proposal for adoption of gas furnace standards that enjoy consensus support, while not delaying the current rulemaking, except to the extent necessary to provide such opportunity.

Sec. 4124. Future of Industry Program:

This section would direct DOE-funded higher education-based Industrial Assessment Centers (IACs) to identify opportunities for optimizing energy efficiency and environmental performance, including implementation of information technology advancements for supply chain analysis, logistics, system monitoring, and industrial and manufacturing processes. IACs also would be directed to coordinate with the Manufacturing Extension Partnership Centers of the National Institute of Standards and Technology and DOE's Building Technologies Program to increase partnerships with the national laboratories and energy service and technology providers to leverage private sector expertise.

CHAPTER 3—ENERGY PERFORMANCE CONTRACTING

Sec. 4131. Use of Energy and Water Efficiency Measures in Federal Buildings:

This section would:

- Requires DOE to report on the status of each Federal agency's energy savings performance contracts and utility energy service contracts, the investment value of such contracts, the guaranteed energy savings for the previous year as compared to the actual energy savings for the previous year, the plan for entering into such contracts in the coming year, and information explaining why any previously submitted plans for such contracts were not implemented;

- Prohibits Federal agencies from limiting the recognition of operation and maintenance savings associated with systems modernized or replaced with the implementation of energy conservation measures, water conservation measures, or any series of energy conservation measures and water conservation measures;
- Clarify that Federal agency payments of energy, water, and wastewater treatment expenses, pursuant to an energy savings performance contract or utility energy service contracts shall include related operation and maintenance expenses; and
- Revises the definition of “energy savings” to include (1) the use, sale, or transfer of energy incentives, rebates, or credits (including renewable energy credits) from governments or utilities; and (2) any revenue generated from a reduction in energy or water use, more efficient waste recycling, or additional energy generated from more efficient equipment.

CHAPTER 4—SCHOOL BUILDINGS

Sec. 4141. Coordination of Energy Retrofitting Assistance for Schools:

This section would amend the Energy Policy and Conservation Act to direct DOE to establish a clearinghouse to disseminate information regarding available programs and financing mechanisms that could be used to help initiate, develop, and finance energy efficiency, distributed generation, and energy retrofitting projects for schools. DOE would be required to: (1) consult with appropriate agencies to develop a list of programs and financing mechanisms that are, or may be, used for the projects, and (2) coordinate with appropriate agencies to develop a collaborative education and outreach effort to streamline communications and promote the programs and financing mechanisms.

SUBTITLE B—ACCOUNTABILITY

CHAPTER 1—MARKET MANIPULATION, ENFORCEMENT, AND COMPLIANCE

Sec. 4211. FERC Office of Compliance Assistance and Public Participation:

This section would require FERC to establish an Office of Compliance Assistance and Public Participation headed by a Director who shall be responsible for promoting improved compliance with Commission rules and orders by, among other things, providing entities regulated by the Commission the opportunity to obtain timely compliance guidance; making recommendations with respect to market behavior and enforcement; issuing reports and guidance; and performing outreach to regulated community.

CHAPTER 2—MARKET REFORMS

Sec. 4221. GAO Study on Wholesale Electricity Markets:

This section would require the Government Accountability Office to study whether and how the market rules, practices, and structures of regional transmission organizations produce rates that are just and reasonable.

B. H.R. 3242, Child Nicotine Poisoning Prevention Act of 2015

H.R. 3242, introduced by Representative Susan Brooks, would require that liquid nicotine containers that are sold, manufactured for sale, distributed for commerce, or imported in the U.S. are packaged according to special packaging standards as defined in the Poison Prevention Packaging Act of 1970.

Section 1. Short Title

Section 1 provides that the Act may be cited as the “Child Nicotine Poisoning Prevention Act of 2015.”

Section 2. Special Packaging for Liquid Nicotine Containers

Section 2 establishes a requirement that liquid nicotine containers that are sold, manufactured for sale, distributed for commerce, or imported in the U.S. are packaged according to special packaging standards as defined in the Poison Prevention Packaging Act of 1970. It also establishes a savings clause for the Secretary of Health and Human Services to take any action regarding the manufacture, marketing, sale, distribution, importation, or packaging of nicotine, liquid nicotine containers, or electronic nicotine delivery systems. This includes the authority for a final rulemaking on the proposed “Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and the Required Warning Statements for Tobacco Products” and “Nicotine Exposure Warnings and Child-Resistant Packaging for Liquid Nicotine, Nicotine-Containing E-Liquid(s), and Other Tobacco Products.”

If the Secretary decides to adopt, maintain, enforce, impose, or continue in effect any packaging requirement for liquid nicotine containers, this section directs the Secretary to do so in consultation with the Consumer Product Safety Commission. This section also sets forth definitions for terms contained within the Act.

C. Proposed Matters for Inclusion in Reconciliation Recommendations

The legislation would (1) repeal the Prevention and Public Health Fund, which was created by Patient Protection and Affordable Care Act; (2) save taxpayers’ money by prohibiting Medicaid reimbursement for certain providers for one year; (3) provide resources for other health care providers for one year.

III. STAFF CONTACTS

If you have any questions regarding H.R. 8, please contact Tom Hassenboehler, Patrick Currier, or Brandon Mooney. If you have any questions regarding H.R. 3242, please contact Paul Nagle or Olivia Trusty. If you have any questions regarding Proposed Matters for Inclusion in Reconciliation Recommendations, please contact Clay Alspach or Josh Trent. All Committee staff can be reached at (202) 225-2927.