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The EPA's Global Warming Regulation Plans

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With Congress unable to pass cap-and-trade legislation as easily as some Members hoped, the Environmental Protection Agency (EPA) is moving forward with its own set of global warming regulations. The EPA's endangerment finding, which took effect January 14, gives the EPA authority under section 202(a) of the Clean Air Act (CAA) to regulate greenhouse gases (GHGs).

The EPA's attempt to regulate carbon dioxide (CO₂), in addition to being the most expensive and expansive environmental regulation in history, would bypass the legislative process completely. Congress should amend the Clean Air Act in order to prevent unelected government bureaucrats from bankrupting the nation.

A Brief History. In 1999, several groups of environmental activists sued the EPA to force the agency regulate CO₂ from motor vehicles. Eventually the case made it to the Supreme Court; in April 2007 the Court ruled that carbon dioxide and five other GHGs are pollutants and can be regulated under the CAA. The Court ordered the EPA Administrator to determine whether these GHG emissions were dangerous to human health and the environment and whether the scientific consensus on the effects of GHGs was settled.¹

In July 2008, the EPA released its 564-page Advance Notice of Proposed Rulemaking (ANPR), which details the types of businesses and entities that would potentially be affected by broadening the scope of the CAA. Schools, farms, restaurants, hospitals, apartment complexes, churches, and anything with a motor—from motor vehicles to

lawnmowers, jet skis, and leaf blowers—could be subject to regulations.²

The endangerment finding itself does not put into place any new regulations, but it does commence a long regulatory process, beginning with finalizing plans to enforce greenhouse gas (GHG) emission standards for light-duty vehicles in March.

An Economic Disaster, Not an Environment Saver. Much like a cap-and-trade system, the goal of the EPA's regulatory scheme is to reduce CO₂ emissions. And also much like cap and trade, the EPA's plan would have similar economic costs.

The Heritage Foundation's Center for Data Analysis modeled the economic effects of the Senate cap-and-trade bill and found gross domestic product (GDP) loss per family of four of over \$4,500 per year and job losses exceeding 2.5 million by 2031.³ Regulating CO₂ emissions under the CAA would burden the economy with higher energy costs, higher administrative compliance costs for businesses, higher bureaucratic costs for enforcing the regulations, and higher legal costs from the inevitable litigation. Even without CO₂ regulations in place, the EPA's actions are still causing harm by creating an unpredictable environment for investors.

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One of the criteria the Supreme Court ordered the EPA to consider in making the endangerment finding was whether the science was too unsettled to reach a conclusion on GHGs' effects on health and the environment. The scientific consensus on the effects of GHG emissions is turning out to be anything but a consensus. The EPA relied on the 2007 United Nations' Intergovernmental Panel on Climate Change report to establish consensus, but more than 700 scientists dispute the findings.⁴

Tailpipe Emissions Rules: Costly and Ineffective. The first target of the EPA's endangerment finding is motor vehicles. As part of the endangerment finding, the National Highway Traffic Safety Administration and the EPA jointly proposed to improve vehicle fuel economy for model years 2012–2016. In order for automakers to meet production requirements, the new regulations must be finalized by March 31.

New fuel efficiency standards come with a number of unintended consequences: higher prices for new cars, smaller and more dangerous cars, and costly retooling of existing auto plants.⁵ And increased fuel efficiency often leads to more driving, cancelling out any reductions in CO₂ emissions.⁶

Tailoring Rule: Temporary and Problematic. As the CAA is currently written, the endangerment finding would require that the EPA regulate sources or establishments that emit 100 or 250 tons or more

of a pollutant per year. The EPA is proposing a “tailoring rule” that would amend the CAA so that only entities that emit 25,000 tons of carbon dioxide equivalent per year would be affected. But the tailoring rule stands on shaky legal ground since it violates the existing statutory language that requires all sources that emit more than 100 or 250 tons be subject to regulation. The proposed change will likely be contested by environmental activists who want to see all entities regulated no matter their shape or size.

Even with the tailoring rule in place, more than 1,200 small businesses—including brick manufacturers, small municipal utilities, small coal mines, and small paper and pulp mills—exceed the 25,000-ton equivalent of CO₂.⁷ Although smaller business may be protected (but for only six years, according to the rule), most would still be indirectly hit through higher energy costs.

Time for Congressional Action. To protect America's energy and economic interests, Congress should rein in the EPA's regulatory authority by amending the CAA to exclude carbon dioxide and other greenhouse gases from coming under the EPA's purview. There are multiple bills currently aimed at that goal:

- Representatives Marsha Blackburn (R–TN) and Earl Pomeroy (D–ND) have recently introduced bipartisan legislation that amends the CAA to exclude GHGs.

1. U.S. Environmental Protection Agency, “Endangerment and Cause or Contribute Findings for Greenhouse Gases under the Clean Air Act,” at <http://www.epa.gov/climatechange/endangerment.html#findings> (January 12, 2010).
2. U.S. Environmental Protection Agency, “Advance Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions under the Clean Air Act,” at <http://www.epa.gov/climatechange/anpr.html> (January 12, 2010).
3. Study forthcoming.
4. Marc Morano, “UN Blowback: More Than 650 International Scientists Dissent over Man-Made Global Warming Claims,” U.S. Senate Committee on Environment and Public Works, March 16, 2009, at http://epw.senate.gov/public/index.cfm?FuseAction=Minority.Blogs&ContentRecord_id=2158072e-802a-23ad-45f0-274616db87e6 (January 13, 2010).
5. See Ben Lieberman, “S. 1419: Bad News for Any Energy Consumer,” Heritage Foundation *WebMemo* No. 1506, June 13, 2007, at <http://www.heritage.org/Research/EnergyandEnvironment/wm1506.cfm>.
6. Sam Kazman, “Automobile Fuel Economy Standards,” Competitive Enterprise Institute, updated 2008, at http://docs.google.com/viewer?a=v&q=cache%3AVVDdx5QkwiSkJ%3Acei.org%2Fcei_files%2Ffm%2Factive%2F0%2FEnvironmentalSource_EnergyAuto.pdf+Automobile+Fuel+Economy+Standards+and+Competitive+Enterprise+Institute&hl=en&gl=us&sig=AHIEtbR_PHIbx3x54j3E6BQeWTT41YmrRA&pli=1 (January 13, 2010).
7. U.S. Department of Commerce, Small Business Administration, Office of Advocacy, “Comments on EPA's Proposed Rule, ‘Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule,’” December 23, 2009, at http://www.sba.gov/advo/laws/comments/epa09_1223.html (January 12, 2009).

- Senator Lisa Murkowski (R-AK) and Congressman Jerry Moran (R-KS) have introduced a resolution that would prevent the EPA from regulating GHG emissions.
- Last spring, Senators John Thune (R-SD) and Charles Schumer (D-NY) introduced a “cow tax” bill that permanently prohibits the EPA from using the CAA to regulate GHG emissions associated with livestock production. Although prohibiting the EPA from regulating GHGs entirely would be preferable, the cow tax bill is a step in the right direction.

A Bad Deal All Around. The burden of the EPA regulations will be paid for by every American. The regulations would have the same impact on GDP and employment as would a major new energy tax as passed through cap and trade, but they would be worse, since they would entail more compliance, administrative, and legal costs. All in all, they would be a bad deal for American consumers.

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