

# WebMemo



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## Senate Should Reject EPA's Regulatory Overreach on Global Warming

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The Clean Air Act was never intended to address global warming, and regulations attempting to do so would be very troublesome for the economy. Fortunately, the Congressional Review Act was enacted to stop just such bad regulations. S.J. Res. 26, sponsored by Senator Lisa Murkowski (R-AK) would use the act to stop the Environmental Protection Agency (EPA) from imposing global warming regulations that would do tremendous economic damage in the years ahead.

**The Congressional Review Act: A Worthwhile Tool to Stop Bad Regulations.** Congress has long recognized that federal regulators often overreach, promulgating regulations that go well beyond what the legislators intended. And Congress should know, as it passes the very laws it entrusts regulators to implement. In order to provide a means of stopping unwarranted or ill-advised regulations, Congress and President Clinton enacted the Congressional Review Act in 1996. The statute allows Congress to pass, by simple majority and with limited debate time, a resolution of disapproval against any newly promulgated federal regulation it opposes, thus revoking the regulation.

**EPA's Endangerment Finding: A Perfect Use of the Congressional Review Act.** It is hard to imagine a more appropriate application of the Congressional Review Act than a disapproval against the EPA's attempt to regulate energy use in the name of addressing global warming.

The EPA is exercising regulatory authority under the Clean Air Act—a 1970 statute created to fight

smog, soot, and other air pollutants—to regulate carbon dioxide emissions. However, carbon dioxide is not a pollutant but a natural constituent of the air and the ubiquitous and unavoidable byproduct of fossil fuel use.

Those who believe that these emissions are contributing to potentially serious global warming would like to use the Clean Air Act to regulate them. Perhaps the biggest problem in doing so is that the thresholds for regulation under the Clean Air Act—any source emitting 250 tons per year of a pollutant—makes sense for regulating real pollutants from power plants and factories but would ensnare many smaller entities if carbon dioxide is regulated.

In other words, treating carbon dioxide as a pollutant means that costly EPA red tape would reach into potentially millions of commercial buildings, schools, churches, small businesses, farms—just about anything that uses more than a little electricity, natural gas, or gasoline.

The EPA readily admits that such regulations could impact millions of small businesses and impose costs well into the thousands of dollars for every one of them.<sup>1</sup> For example, the agency esti-

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mates that 1,354,760 commercial buildings could come under EPA regulations for the first time.<sup>2</sup>

The burden on farmers is no less worrisome.<sup>3</sup> According to the Department of Agriculture, just one Clean Air Act program under Title V of the statute would apply to “dairy facilities with over 25 cows, beef cattle operations of over 50 cattle, swine operations with over 200 hogs, and farms with over 500 acres of corn.”<sup>4</sup> Overall, cumulative gross domestic product losses could reach nearly \$7 trillion by 2029, and annual job losses could exceed 800,000 in several years.<sup>5</sup>

The EPA has made an effort to shield small entities from the impact of its regulations with a so-called “tailoring rule” that raises the thresholds in the Clean Air Act. However, such a regulatory rewrite of the law is on shaky legal ground and could easily be overturned in a lawsuit from an environmental group. And in any event, the EPA’s exemption for small entities provides only limited relief.

The EPA has taken the first step toward implementing this regulatory scheme by declaring that carbon dioxide endangers public health—though it should be noted that there are lawsuits challenging the validity of the science on which the EPA’s finding rests. The first target is motor vehicles, which have been subject to costly new fuel economy standards. But once carbon dioxide is thus regulated, the EPA is required to regulate it from stationary sources as well.

**Time for Congress to Act.** Even putting aside growing doubts about the seriousness of the alleged global warming threat, the fact that the Obama Administration is bypassing America’s elected officials and putting legislative authority in the hands of an unelected bureaucracy is objectionable in its own right. Senator Murkowski has recognized that this is precisely the kind of regulatory excess for which congressional restrictions are needed. Her resolution of disapproval would revoke the EPA’s endangerment finding, without which subsequent global warming regulations could not be imposed.

In the meantime, Congress continues to consider global warming legislation, including a recent proposal from Senators John Kerry (D–MA) and Joe Lieberman (I–CT) called the American Power Act. Congress has wisely rejected such measures in the past, and this new bill has serious problems as well. But the point is that the decision of whether to impose or reject such provisions belongs in the hands of elected leaders, not a regulatory agency. Congress should put such decision-making authority back where it belongs and prevent perhaps the costliest example of regulatory excess from seeing the light of day.

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1. See Ben Lieberman, “Small Business Impact of the EPA Endangerment Finding,” Heritage Foundation *WebMemo* No. 2766, January 20, 2010, at <http://www.heritage.org/Research/Reports/2010/01/Small-Business-Impact-of-the-EPA-Endangerment-Finding>.
2. Environmental Protection Agency, “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule,” October 27, 2009, pp. 55, 338.
3. See Ben Lieberman, “EPA’s Global Warming Regulations: A Threat to American Agriculture,” Heritage Foundation *WebMemo* No. 2851, April 1, 2010, at <http://www.heritage.org/Research/Reports/2010/04/EPAs-Global-Warming-Regulations-A-Threat-to-American-Agriculture>.
4. U.S. Department of Agriculture and other agencies, letter to Susan Dudley, Office of Management and Budget, July 9, 2008, p. 3.
5. Karen Campbell and David Kreutzer, “Carbon Dioxide Emissions Cuts: The Economic Costs of the EPA’s ANPR Regulations,” Heritage Foundation *Center for Data Analysis Report* No. 08-10, October 29, 2008, at <http://www.heritage.org/Research/Reports/2008/10/CO2-Emission-Cuts-The-Economic-Costs-of-the-EPAs-ANPR-Regulations>.