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# Regulating Greenhouse Gases: A Single Federal Statute Should Fully Replace All Federal and State Regulations

As Congress considers legislation to reduce the nation's carbon dioxide (CO<sub>2</sub>) and other greenhouse gas (GHG) emissions, it is essential to harmonize state and federal policies to avoid multiple, overlapping GHG regulatory regimes. Comprehensive federal climate change legislation should be the single governing authority for GHGs and should fully replace regulations issued by federal agencies, such as the U.S. Environmental Protection Agency (EPA), to control GHGs under the Clean Air Act (CAA) and other environmental statutes. Only a single federal statute designed with the unique characteristics of GHGs in mind—rather than overlapping, duplicative, and potentially conflicting regulations—can provide the certainty needed for businesses to reduce GHG emissions effectively as well as the flexibility needed to help mitigate the economic impacts on consumers.

## **A Single Federal Statute Is Essential for Effective, Efficient GHG Regulation**

EPA and other federal agencies are developing an ad hoc framework for regulations to address climate change using the CAA, the Clean Water Act, the Endangered Species Act, the National Environmental Policy Act, and other federal statutes. Yet none of these laws was designed for the unique, global nature of climate change and GHGs. At best, they provide temporary, expensive, piecemeal options—not an efficient, comprehensive approach.

At the same time, a number of states—and even localities—are attempting to address climate change. Some states have passed laws to control GHGs. The economy and businesses are at risk when states, federal agencies, and Congress create a patchwork of overlapping, duplicative, and potentially conflicting regulations. This approach creates enormous uncertainty and threatens effective emissions reductions.

Instead, a single federal statute—to replace all other federal and state statutes—will provide a clear path to a low-carbon future with the certainty and flexibility needed to protect the environment and consumers. Only comprehensive federal legislation can provide the proper framework to address the myriad issues that must be considered to address GHG emissions.

## **Regulating GHGs Through the CAA Is the Wrong Approach**

The CAA focuses on local and regional environmental issues. CAA provisions can effectively target a specific locality, state, or region and require emissions reductions at that geographic scale. However, unlike other air emissions, GHG emissions do not cause “hot spots” or have localized or regional impacts. Regulations designed decades ago to improve local and regional air quality are not an effective method of addressing global GHG emissions or GHG levels in the atmosphere.

EPA has begun the regulatory process to control GHG emissions through the CAA. In response to a 2007 Supreme Court decision, EPA will regulate GHGs from new motor vehicles at the end of March 2010. Due to the interrelated nature of the CAA, these requirements will automatically trigger permitting and emission reduction requirements for new and modified power plants and industrial sources of GHGs. These sources will be required to use the best available control technology (BACT) to control GHG emissions. BACT is determined on a case-by-case analysis for each covered facility—whether it is a power plant, a manufacturing plant, or some other type of industrial facility—even though there is no local GHG impact. Plant-by-plant solutions will be inefficient, costly, and may cause some of these facilities to close.

Furthermore, the CAA's inflexibility makes it unlikely that a comprehensive economy-wide program could be created. Although the concept of emissions trading was pioneered under the CAA, through the Acid Rain Program's "cap-and-trade" system, that program only includes a few of the many important features of a trading system for GHGs. The Acid Rain Program has not included borrowing, multi-year compliance periods, or offsets to help reduce the costs of compliance.

Some have argued that in addition to a declining cap on emissions through a cap-and-trade system, specific standards—implemented through the CAA—also are needed for existing coal-based electric plants, to drive their emissions down over time. However, a cap-and-trade approach is the most effective way to reduce GHG emissions. The declining cap provides the impetus for letting power plants operators and state regulators decide how best to reduce emissions to meet environmental, energy, and economic goals.

Many energy experts, policy-makers, and regulators—including the EPA Administrator and congressional leaders—agree that the CAA is the wrong tool for achieving effective and efficient GHG regulation and that comprehensive legislation is the better path:

- "I want the legislation for a number of reasons. ... I think the legislative process is about allowing for the concerns that different regions of the country have because of their dependence on [carbon intensive] coal. ... All of these things can't happen easily through a regulatory dialogue no matter how open we make the process because those issues fall outside the Clean Air Act."
  - *Lisa Jackson, Administrator, U.S. Environmental Protection Agency, Time.com, April 23, 2009*
- Regulating GHGs using the CAA would be a "glorious mess" involving "inherently political decisions that should be made by an elected and accountable Congress."
  - *Rep. John Dingell (D-MI), "Strengths and Weaknesses of Regulating Greenhouse Gas Emissions Using Existing Clean Air Act Authorities," statement before the Committee on Energy and Commerce Subcommittee on Energy and Air Quality, April 10, 2008.*

## Comprehensive Federal Legislation Should Be the Single Governing Authority for GHGs

Climate change legislation should provide EPA with clear authority to regulate GHG emissions under a single new law that provides affected businesses with the flexibility to reduce emissions in the most cost-effective manner for their customers. Well-designed legislation can create an economy-wide emissions reductions program that considers a number of important factors—the current and projected economic situation, the availability of technology, the reliability of the nation's power sector and energy supply, and other relevant factors—that do not readily fit in a CAA context. Importantly, comprehensive climate legislation can incentivize the development and deployment of the full suite of climate technologies and measures; provide a level of certainty to encourage the investment necessary for compliance; and use flexible, market-based approaches to contain costs.

"We need a unified set of rules for the country. We need to give the businesses the kind of predictability and certainty so they can make the capital investments that are going to get us the kind of reductions we need. That is best done through legislation... [E]verything is moving towards getting legislation done because it is the best way to do it."

- *Carol M. Browner, Assistant to the President for Energy and Climate Change, Press Briefing, September 22, 2009*

H.R. 2454, the American Clean Energy and Security Act passed by the House of Representatives in June 2009, exempts regulated entities from *some* CAA regulation. However, these exemptions are limited and

leave EPA much latitude to regulate GHG emissions under the CAA. For example, EPA could regulate CO<sub>2</sub> because of its direct impacts on air and water. Yet impacts of GHG emissions on air and water will be addressed effectively by H.R. 2454's emissions cap, and CAA regulation would provide no additional benefits.

S. 1733, the climate change bill introduced by Senators John Kerry and Barbara Boxer, contains **no** exemptions from CAA regulation. If EPA is permitted to pursue CAA regulation in combination with federal climate legislation, regulated entities would be subject to multiple, changing layers of competing requirements and regulations. This would undermine the basic principle of an emissions cap: to provide definitive environmental benefits and the flexibility needed to reduce emissions in a cost-effective manner. Layering rigid CAA regulations on top of an emissions cap would increase costs unnecessarily for both companies and their customers.

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A single, comprehensive federal climate change law—rather than a regime that would permit multiple, overlapping, or conflicting mandates and regulations—is key to creating an economy-wide program that will effectively reduce GHGs, while also containing costs. Federal climate change legislation should harmonize existing state and federal statutes and fully replace CAA regulation of GHG emissions.

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