

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 910) TO AMEND THE CLEAN AIR ACT TO PROHIBIT THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY FROM PROMULGATING ANY REGULATION CONCERNING, TAKING ACTION RELATING TO, OR TAKING INTO CONSIDERATION THE EMISSION OF A GREENHOUSE GAS TO ADDRESS CLIMATE CHANGE, AND FOR OTHER PURPOSES

APRIL 5, 2011.—Referred to the House Calendar and ordered to be printed

Mr. SESSIONS, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 203]

The Committee on Rules, having had under consideration House Resolution 203, by a record vote of 8 to 3, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 910, the Energy Tax Prevention Act of 2011, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Energy and Commerce. The resolution waives all points of order against consideration of the bill. The resolution provides that the amendment in the nature of a substitute recommended by the Committee on Energy and Commerce now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The resolution waives all points of order against the committee amendment in the nature of a substitute. The rule further makes in order only those amendments printed in this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against the amendments printed in this report are waived. Finally, the resolution provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

Although the resolution waives all points of order against consideration of the bill, the Committee is not aware of any points of order against its consideration. The waiver of all points of order are prophylactic.

The waiver of all points of order against the committee amendment in the nature of a substitute to H.R. 910 includes a waiver of clause 7 of rule XVI, prohibiting non-germane amendments. This waiver is necessary because the Committee on Energy and Commerce adopted an amendment in committee markup that was not germane to the bill.

Although the resolution waives all points of order against the amendments printed in this report, the Committee is not aware of any points of order against the amendments and therefore the waiver is prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 68

Motion by Mr. McGovern to report an open rule. Defeated: 3–7.

Majority Members	Vote	Minority Members	Vote
Ms. Foxx	Nay	Mr. McGovern	Yea
Mr. Bishop of Utah	Nay	Mr. Hastings of Florida	Yea
Mr. Woodall	Nay	Mr. Polis	Yea
Mr. Nugent	Nay		
Mr. Webster	Nay		
Mr. Reed	Nay		
Mr. Dreier, Chairman	Nay		

Rules Committee record vote No. 69

Motion by Mr. McGovern to amend the rule to make in order and provide the appropriate waivers for amendment #35, offered by Rep. McGovern (MA), Rep. Blumenauer (OR), and Rep. Welch (VT), which would reduce the federal deficit by \$40 billion by eliminating subsidies to oil companies. Defeated: 3–8.

Majority Members	Vote	Minority Members	Vote
Ms. Foxx	Nay	Mr. McGovern	Yea
Mr. Bishop of Utah	Nay	Mr. Hastings of Florida	Yea
Mr. Woodall	Nay	Mr. Polis	Yea
Mr. Nugent	Nay		
Mr. Scott of South Carolina	Nay		
Mr. Webster	Nay		
Mr. Reed	Nay		
Mr. Dreier, Chairman	Nay		

Rules Committee record vote No. 70

Motion by Mr. McGovern to amend the rule to make in order and provide the appropriate waivers for amendment #34, offered by Rep. Crowley (NY), which would eliminate the exception for the renewable fuel standard (ethanol) in the bill. Defeated: 3–8.

Majority Members	Vote	Minority Members	Vote
Ms. Foxx	Nay	Mr. McGovern	Yea
Mr. Bishop of Utah	Nay	Mr. Hastings of Florida	Yea
Mr. Woodall	Nay	Mr. Polis	Yea
Mr. Nugent	Nay		
Mr. Scott of South Carolina	Nay		
Mr. Webster	Nay		
Mr. Reed	Nay		
Mr. Dreier, Chairman	Nay		

Rules Committee record vote No. 71

Motion by Mr. Hastings of Florida to amend the rule to make in order and provide the appropriate waivers for amendment #29, offered by Rep. Cleaver (MO), which would have Congress accept the following findings of the 2004 report, African Americans and Climate Change: an Unequal Burden, stating global climate change will disproportionately burden communities of color. Defeated: 3–8.

Majority Members	Vote	Minority Members	Vote
Ms. Foxx	Nay	Mr. McGovern	Yea
Mr. Bishop of Utah	Nay	Mr. Hastings of Florida	Yea
Mr. Woodall	Nay	Mr. Polis	Yea
Mr. Nugent	Nay		
Mr. Scott of South Carolina	Nay		
Mr. Webster	Nay		
Mr. Reed	Nay		
Mr. Dreier, Chairman	Nay		

Rules Committee record vote No. 72

Motion by Mr. Polis to amend the rule to make in order and provide the appropriate waivers for amendment #22, offered by Rep. Blumenauer (OR), Rep. Doggett (TX), and Rep. McDermott (WA), which would amend the Clean Air Act to prevent the Administrator of the Environmental Protection Agency from imposing an energy tax. Defeated: 3–8.

Majority Members	Vote	Minority Members	Vote
Ms. Foxx	Nay	Mr. McGovern	Yea
Mr. Bishop of Utah	Nay	Mr. Hastings of Florida	Yea
Mr. Woodall	Nay	Mr. Polis	Yea
Mr. Nugent	Nay		
Mr. Scott of South Carolina	Nay		
Mr. Webster	Nay		
Mr. Reed	Nay		
Mr. Dreier, Chairman	Nay		

Rules Committee record vote No. 73

Motion by Ms. Foxx to report the rule. Adopted: 8–3.

Majority Members	Vote	Minority Members	Vote
Ms. Foxx	Yea	Mr. McGovern	Nay
Mr. Bishop of Utah	Yea	Mr. Hastings of Florida	Nay
Mr. Woodall	Yea	Mr. Polis	Nay
Mr. Nugent	Yea		
Mr. Scott of South Carolina	Yea		
Mr. Webster	Yea		
Mr. Reed	Yea		
Mr. Dreier, Chairman	Yea		

SUMMARY OF AMENDMENTS MADE IN ORDER

1. Jackson Lee (TX): Would require an EPA study to determine the long term impact of a complete ban on their authority to regulate greenhouse gases. (10 minutes)

2. Jackson Lee (TX): Would insert a new section to provide considerations and procedures in finalizing greenhouse gas regulations. (10 minutes)

3. McNerney (CA): Would clarify that voluntary programs addressing climate change classify as exceptions to the bill's prohibitions. (10 minutes)

4. Cuellar (TX): Would amend the definition of greenhouse gas, to remove water vapor as a part of the definition, amend the act by striking the removal of existing EPA findings and rules, and exempt all auto standards from the legislation. (10 minutes)

5. Murphy, Christopher (CT): Would clarify that the Agency can continue to provide technical assistance to states taking action to limit greenhouse gas emissions. (10 minutes)

6. Waxman (CA), DeGette (CO), Inslee (WA): Would add a new section with respect to Congressional Acceptance of Scientific Findings: Congress accepts the scientific findings of the Environmental Protection Agency that climate changes is occurring, is caused largely by human activities, and poses significant risks for public health and welfare. (10 minutes)

7. Quigley (IL): Would require GAO to report to Congress the results of a study of health care costs in the U.S. as affected by the elimination of EPA regulation under this Act, as compared to health care costs in the U.S. as would be affected by the EPA proceeding under their regulating authority as determined in Massachusetts v. EPA. (10 minutes)

8. Polis (CO): Would ensure the EPA Administrator can protect the public health in case of public health emergency. (10 minutes)

9. Markey, Edward (MA): Would ensure that any prohibition on or limitation to EPA's Clean Air Act authority contained in the bill would not apply to any action EPA could take to reduce demand for oil. (10 minutes)

10. Rush (IL): Would prevent the provisions of this act from going into effect until the EPA Administrator, in consultation with the Secretary of Defense, certifies that the consequences of not regulating greenhouse gas emissions, and its subsequent impact on climate change, including the potential to create sustained natural and humanitarian disasters and the ability to likely foster political instability where societal demands exceed the capacity of governments to cope, do not jeopardize American security interests at home or abroad. (10 minutes)

11. Doyle (PA), Ryan, Tim (OH): Would include a study to determine whether regulations of the Environmental Protection Agency under the Clean Air Act to address climate change, if not repealed or otherwise made unauthorized by section 2 of the bill, would cause greenhouse gas leakage and reduce the international competitiveness of United States producers of energy-intensive products. (10 minutes)

12. Kind (WI), Owens (NY): AMENDMENT IN THE NATURE OF A SUBSTITUTE Would codify the Environmental Protection Agency's Tailoring Rule in order to protect farms, small businesses,

and small- and medium-sized stationary sources from greenhouse gas regulation. (10 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON LEE, SHEILA OF TEXAS OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike sections 2 and 3 of the bill, redesignate section 4 of the bill as section 3, and insert after section 1 of the bill the following section:

SEC. 2. STUDY AND REPORT.

(a) STUDY.—In the interest of protecting national security, the Administrator of the Environmental Protection Agency shall conduct a study to determine—

(1) the long term impacts of the Environmental Protection Agency having no authority to regulate emissions of greenhouse gases;

(2) if there are alternatives to ensure compliance with the Clean Air Act; and

(3) best practices with respect to greenhouse gas regulation under the Clean Air Act.

(b) REPORT.—Not later than 60 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall submit to Congress a report on the results of the study under subsection (a), including any findings and recommendations.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON LEE, SHEILA OF TEXAS OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike sections 2 and 3, redesignate section 4 as section 3, and insert after section 1 the following:

SEC. 2. CONSIDERATIONS AND PROCEDURES IN FINALIZING GREENHOUSE GAS REGULATIONS.

In the interest of properly considering the importance of energy to the national security of the United States, before finalizing any greenhouse gas regulation the Administrator of the Environmental Protection Agency—

(1) shall provide a notice period of no less than 30 days specifically to the affected greenhouse gas producers proposed to be regulated and allow industry-specific comments to be submitted to the Administrator regarding the economic impact of the proposed regulation on the regulated industry; and

(2) provide an opportunity for the regulated industry to request and receive a 60-day extension of such comment period during which the Administrator shall conduct a study to be submitted to Congress regarding—

(A) the effect of the proposed regulation on the level of greenhouse gas reduction;

(B) the effect of the proposed regulation on energy production levels;

(C) the feasibility of implementation of the regulation on the entities being regulated;

(D) the effect of the proposed regulation on the availability of energy to consumers; and

(E) the adverse environmental effects of delaying implementation of the proposed regulation.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MCNERNEY, JERRY OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 330(b)(2)(C) of the Clean Air Act, as added by section 2 of the bill, after “demonstration programs” insert “and voluntary programs”.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CUELLAR, HENRY OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 330 of the Clean Air Act, as added by section 2 of the bill, amend subsection (a) to read as follows:

“(a) DEFINITION.—In this section, the term ‘greenhouse gas’ means any of the following:

“(1) Carbon dioxide.

“(2) Methane.

“(3) Nitrous oxide.

“(4) Hydrofluorocarbons.

“(5) Perfluorocarbons.

“(6) Sulfur hexafluoride.

In section 330(b) of the Clean Air Act, as added by section 2 of the bill—

(1) in paragraph (1)—

(A) in subparagraph (A), strike “under this Act” and insert “under title I or title V of this Act”; and

(B) in subparagraph (B), strike “The definition” and insert “For purposes of title I and title V only, the definition”;

(2) in paragraph (2)(A), strike “Notwithstanding paragraph (4)(B), implementation” and insert “Implementation”; and

(3) strike paragraph (4) and redesignate paragraph (5) accordingly.

Strike section 3 of the bill (and redesignate section 4 of the bill as section 3).

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MURPHY, CHRISTOPHER OF CONNECTICUT OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 10, line 6, after subparagraph (C), insert the following new subparagraph:

“(D) TECHNICAL ASSISTANCE.—Nothing in this section shall be construed to limit the authority of the Administrator to provide technical assistance to States or groups of States for the implementation of regulations those States have adopted or may adopt concerning the limitation of greenhouse gas emissions, including providing any

data developed in accordance with the rules or actions repealed by subsection (b).”.

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WAXMAN, HENRY OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following new section:

SEC. 5. CONGRESSIONAL ACCEPTANCE OF SCIENTIFIC FINDINGS.

Congress accepts the scientific findings of the Environmental Protection Agency that climate change is occurring, is caused largely by human activities, and poses significant risks for public health and welfare.

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE QUIGLEY, MIKE OF ILLINOIS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following:

SEC. 5. GAO REPORT.

Not later than one year after the date of enactment of this Act, the Comptroller General shall submit to Congress a report containing the results of a study of health care costs in the United States as affected by the elimination of Environmental Protection Agency regulation under this Act, as compared to health care costs in the United States as would be affected by the Environmental Protection Agency proceeding with regulation in its role as determined in *Massachusetts v. EPA* (549 U.S. 497 (2007)).

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE POLIS, JARED OF COLORADO OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 330 of the Clean Air Act, as proposed to be added by section 2 of the bill, insert after subsection (a) the following (and redesignate the subsequent subsections accordingly):

“(b) TEMPORARY SUSPENSION FOR PUBLIC HEALTH EMERGENCIES.—The Administrator may by rule, after public notice and comment, temporarily suspend the provisions of this section if—

“(1) a detailed analysis and review by the Administrator of the latest credible and peer-reviewed science shows ground level ozone will pose significant dangers to public health;

“(2) extreme weather events pose significant danger to public health;

“(3) an increase in food and waterborne pathogens pose significant danger to public health; or

“(4) there are other significant threats to public health.

9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MARKEY, EDWARD OF MASSACHUSETTS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following new section:

SEC. 5. REDUCING DEMAND FOR OIL.

Notwithstanding any limitation on agency action contained in the amendment made by section 2 of this Act, the Administrator of the Environmental Protection Agency may use any authority under the Clean Air Act, as in effect prior to the date of enactment of this Act, to promulgate any regulation concerning, take any action relating to, or take into consideration the emission of a greenhouse gas to address climate change, if the Administrator determines that such promulgation, action or consideration will reduce demand for oil.

10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE RUSH, BOBBY OF ILLINOIS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following:

SEC. 5. LIMITATION ON APPLICABILITY.

The provisions of this Act, and the amendments made by this Act, shall not apply until the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Defense, certifies that the consequences of climate change, including its potential to create sustained natural and humanitarian disasters and its ability to foster political instability where societal demands exceed the capacity of governments to cope, do not jeopardize security interests of the United States at home or abroad.

11. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DOYLE, MICHAEL OF PENNSYLVANIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill add the following:

SEC. 5. STUDY ON EFFECT OF EPA CLIMATE CHANGE REGULATIONS ON INTERNATIONAL COMPETITIVENESS OF UNITED STATES PRODUCERS OF ENERGY-INTENSIVE PRODUCTS.

(a) STUDY.—Not later than 1 year after the date of the enactment of this Act, the Administrator of the Environmental Protection Agency shall—

(1) conduct a study to determine, with respect to the period beginning on such date of enactment and ending on December 31, 2016, the extent to which the regulations of the Environmental Protection Agency under the Clean Air Act to address climate change, if not repealed or otherwise made unauthorized by section 2 of this Act, would—

(A) cause greenhouse gas leakage; and

(B) reduce the international competitiveness of United States producers of energy-intensive products; and

(2) submit a report on the results of the study to the Congress, including recommendations for legislative, administrative, or other actions to mitigate—

(A) any greenhouse gas leakage identified pursuant to paragraph (1)(A); and

(B) any reduction in international competitiveness identified pursuant to paragraph (1)(B).

(b) DEFINITIONS.—In this section:

(1) The term “energy-intensive product” means—

(A) iron, steel, aluminum, cement, bulk glass, paper and pulp, chemicals, or industrial ceramics; or

(B) any other manufactured product which the Administrator of the Environmental Protection Agency determines—

(I) is sold in bulk for purposes of further manufacture; and

(ii) generates, in the course of the manufacture of the product, direct and indirect greenhouse gas emissions that are comparable (on an emissions-per-dollar basis) to emissions generated in the manufacture or production of products identified in subparagraph (A).

(2) The term “greenhouse gas leakage” means an increase in greenhouse gas emissions abroad because of the movement of the production of economic goods from the United States to other countries.

12. AN AMENDMENT IN THE NATURE OF A SUBSTITUTE TO BE OFFERED BY REPRESENTATIVE KIND, RON OF WISCONSIN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike all after the enacting clause and insert the following:

SECTION 1. PROHIBITIONS AGAINST REGULATION OF GREENHOUSE GASES.

The Clean Air Act (42 U.S.C. 7401 and following) is amended by adding the following new section after section 329:

“SEC. 330. PROHIBITIONS AGAINST REGULATION OF GREENHOUSE GASES.

“(a) NEW SOURCE REVIEW.—

“(1) GENERAL RULE.—

“(A) EXCLUDING GREENHOUSE GAS EMISSIONS FROM PERMITTING APPLICABILITY DETERMINATIONS.—

“(i) For purposes of determining whether a stationary source is a ‘major emitting facility’ pursuant to section 169(1), such determination shall not be based on emissions of any air pollutant subject to regulation solely on the basis of such pollutant’s contribution to global climate change.

“(ii) For purposes of determining whether a stationary source has undertaken ‘construction’ pursuant to section 165(a), such determination shall not be based on an increase in the amount of any air pollutant subject to regulation solely on the basis of such pollutant’s contribution to global climate change, nor be based on resulting emissions of such an air pollutant not previously emitted.

“(B) EXCLUDING SMALL GREENHOUSE GAS SOURCES FROM PERMITTING REQUIREMENTS.—No requirement of sections 160 through 169 shall apply with respect to any greenhouse gas unless such gas is subject to regulation under this Act for reasons independent of its effects on global climate change or the gas is emitted by a source that is—

“(i) a new major emitting facility that will emit, or have the potential to emit, greenhouse gases in an

amount of at least 75,000 tons carbon dioxide equivalent per year; or

“(ii) an existing major emitting facility that undertakes construction which increases the amount of greenhouse gases, or which results in emission of greenhouse gases not previously emitted, on a mass basis and by at least 75,000 tons carbon dioxide equivalent per year.

“(2) SPECIAL RULE.—Notwithstanding paragraph (1), as of July 1, 2011, for purposes of section 160 through 169, the term ‘major emitting facility’ shall include a stationary source—

“(A) that is—

“(i) a new stationary source that will emit, or have the potential to emit, greenhouse gases of at least 100,000 tons carbon dioxide equivalent per year (or such other quantity between 50,000 and 100,000 set by the Administrator by regulation effective no earlier than July 1, 2013); or

“(ii) an existing stationary source that emits greenhouse gases of at least 100,000 tons carbon dioxide equivalent per year (or such other quantity between 50,000 and 100,000 set by the Administrator by regulation effective no earlier than July 1, 2013) and that undertakes a physical change or change in the method of operation that will result in an emissions increase of greenhouse gases of at least 75,000 tons carbon dioxide equivalent per year (or such other quantity between 50,000 and 75,000 set by the Administrator by regulation effective no earlier than July 1, 2013); and

“(B) that has greenhouse gas emissions equal to or exceeding 250 tons per year mass emissions or, in the case of any of the types of stationary sources identified in section 169(1), 100 tons per year mass emissions.

“(3) NONPROFIT INSTITUTIONS.—For purposes of section 169(1), no provision in this subsection shall include within the term ‘major emitting facility’ any new or modified facility which is a nonprofit health or educational institution which has been exempted by the state in which it is located.

“(b) TITLE V OPERATING PERMITS.—

“(1) GENERAL RULE.—Notwithstanding any provision of this title or title V, no stationary source shall be required to apply for, or operate pursuant to, a permit under title V, solely due to its status as a major source of greenhouse gases that are subject to regulation under this Act solely on the basis of their effect on global climate change.

“(2) SPECIAL RULE.—As of July 1, 2011, the provisions of paragraph (1) of this subsection shall not apply to any stationary source that emits or has the potential to emit at least 100,000 tons per year carbon dioxide equivalent (or such other quantity between 50,000 and 100,000 set by the Administrator by regulation effective no earlier than July 1, 2013).

“(c) DEFINITION OF GREENHOUSE GAS.—For purposes of this section, the term ‘greenhouse gas’ means the following:

“(1) Carbon dioxide.

“(2) Methane.

- “(3) Nitrous oxide.
- “(4) Sulfur hexafluoride.
- “(5) Hydrofluorocarbons.
- “(6) Perfluorocarbons.
- “(7) Nitrogen trifluoride.
- “(8) Any other anthropogenic gas if the Administrator determines that one ton of such gas has the same or greater effect on global climate change as does one ton of carbon dioxide.”.

