

Bill Comparison: Authority to Regulate Greenhouse Gases

Sponsor	Sen. Barrasso (R-WY)	Sen. Inhofe (R-OK) Rep. Upton (R-MI)	Sen. Rockefeller (D-WV)	Sen. Stabenow (D-MI)	Sen. Baucus (D-MT)
Title	Defending America's Affordable Energy and Jobs Act	Energy Tax Prevention Act of 2011	EPA Stationary Source Regulations Suspension Act	TBA	TBA
Bill number and date	S.228 (Introduced Jan. 31, 2011)	S.482/H.R.910 (Introduced Mar. 3, 2011). Offered as S.Amdt.183 to S.493 by Sen. McConnell (R-KY) (Mar. 15, 2011)	S.231 (Introduced Jan. 31, 2011)	Offered as S.Amdt. 277, an amendment to S.493 (Mar. 30, 2011) ⁱ	Offered as S.Amdt.236, an amendment to S.493 (Mar. 16, 2011)
Co-sponsors	Blunt (R-MO), Cornyn (R-TX), Enzi (R-WY), Inhofe (R-OK), Lee (R-UT), Moran (R-KS), Hatch (R-UT), Roberts (R-KS), Thune (R-SD), Vitter (R-LA)	Reps. Barton (R-TX), Boren (D-OK), McKinley (R-WV), McMorris Rodgers (R-WA), Peterson (D-MN), Rahall (D-WV), Sullivan (R-OK), Walden (R-OR), Whitfield (R-KY). Sens. Manchin (D-WV), 42 Senate Republicans ⁱⁱ	Webb (D-VA), McCaskill (D-MO), Johnson (D-SD), Manchin (D-WV)	Brown (D-OH)	
Greenhouse gases (GHGs) covered	Carbon dioxide (CO ₂); methane (CH ₄); nitrous oxide (N ₂ O); sulfur hexafluoride (SF ₆); any hydrofluorocarbon (HFC); any perfluorocarbon (PFC); nitrogen trifluoride (NF ₃); any substance subject to regulation, action, or consideration due to the contribution of the substance to climate change.	Water vapor; CO ₂ ; CH ₄ ; N ₂ O; SF ₆ ; any HFC; any PFC; any substance subject to, or proposed to be subject to, regulation, action, or consideration under this Act to address climate change. ⁱⁱⁱ	CO ₂ , CH ₄	Water vapor; CO ₂ ; CH ₄ ; N ₂ O; SF ₆ ; any HFC; any PFC; any substance subject to, or proposed to be subject to, regulation, action, or consideration under the CAA to address climate change.	CO ₂ ; CH ₄ ; N ₂ O; SF ₆ ; HFCs; PFCs; NF ₃ ; any other anthropogenic gas that has the same or greater effect on climate change as CO ₂ .
Limitations on regulation of GHGs	The President or head of a Federal department or agency may not: <ul style="list-style-type: none"> promulgate regulations providing for the control of emissions of a GHG, enforce or implement any law enacted or promulgated that provides for the control of emissions of a GHG, 	The Administrator may not: <ul style="list-style-type: none"> promulgate any regulation concerning, take action relating to, or take into consideration the emission of a GHG to address climate change. 	During the 2-year period beginning on the date of enactment, The Administrator may not take any action under the Clean Air Act (CAA) with respect to any stationary source permitting or §111 requirement relating to carbon dioxide or methane.	During the 2-year period beginning on the date of enactment, Any requirement, restriction or limitation under the CAA relating to GHGs shall not be legally effective for any source other than a new motor vehicle or engine. ^{iv}	New Source Review: In determining whether a stationary source is a major emitting facility under §169 (1), or has undertaken construction pursuant to §165(a), "air pollutant" shall not include GHGs unless for reasons other than effects on global climate change.

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Limitations on regulation of GHGs (cont.)	<ul style="list-style-type: none"> take action relating to or consider the climate effects of emissions of a GHG, consider climate effects in implementing or enforcing any law, or condition or deny any approval based on climate effects, unless the law, regulation, action, or consideration is necessary to protect public health from imminent and substantial harm caused by direct exposure, and is based solely on effects other than relating to atmospheric concentrations of GHGs. 	<p>The definition of the term “air pollutant” in §302(g) of the Clean Air Act (CAA) does not include a GHG, except for purposes of addressing concerns other than climate change.</p>		<p>Emissions of GHGs that are subject to regulation under title III of the CAA solely on the basis of the effect of the gases on global climate change shall be excluded if the emissions are from :</p> <ul style="list-style-type: none"> changes in land use;^v growing of commodities, biomass, fruits, vegetables, or other crops; raising of stock, dairy, poultry, or fur-bearing animals; or farms, forests, plantations, ranches, nurseries, ranges, orchards, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities. 	<ul style="list-style-type: none"> Title I, part C permitting shall not apply to GHGs for climate change reasons unless gas is emitted by a stationary source excepted below. No stationary source shall be required to apply for or operate under a permit under title V based solely on effect of GHGs on climate change. <p>Emissions of GHGs that are subject to regulation under the CAA solely on the basis of their effect on global climate change shall be excluded if the emissions are from :</p> <ul style="list-style-type: none"> changes in land use; raising of commodity crops, stock, dairy, poultry, or fur-bearing animals, or the growing of fruits or vegetables; or farms, plantations, ranches, nurseries, ranges, orchards, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities.

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Exceptions (Also see motor vehicle exceptions below)	Prohibition does not apply to: <ul style="list-style-type: none"> regulation, action, or consideration of a GHG under the Clean Air Act (CAA) title VI (stratospheric ozone protection) other than for the potential or actual effect of the GHG on climate change; or voluntary incentive programs to promote the development or deployment of technologies that reduce GHGs. 	Prohibition does not apply to: <ul style="list-style-type: none"> implementation and enforcement of CAA title VI (stratospheric ozone protection), to the extent related only to one or more CAA class I or II substances (certain CFCs and HFCs);vi implementation and enforcement of §211(o) (the Renewable fuel program);vii statutorily authorized federal research, development, and demonstration programs addressing climate change; or implementation and enforcement of §821 (monitoring, reporting, and recordkeeping requirements).viii 	Prohibition does not apply to: <ul style="list-style-type: none"> any action relating to the preparation of a report or the enforcement of a reporting requirement; or any action relating to the provision of technical support at the request of a state. 	Prohibition does not apply to: ^{ix} <ul style="list-style-type: none"> any action related to preparation of a report or the enforcement of a reporting requirement; or any action relating to the provision of technical support at the request of a state. 	The following stationary sources will be subject to regulation under title I part C if the gas is subject to regulation for reasons independent of climate impacts or the gas is emitted by a stationary source that is a new major emitting facility or modification that: <ul style="list-style-type: none"> will emit or have the potential to emit at least 75,000 tons of CO₂ equivalent per year, and has GHG emissions greater than 250 tons per year in mass emissions, or 100 tons for specific types of sources listed in 169(1).
Motor vehicles (Federal standards)	The following remains in effect: <ul style="list-style-type: none"> Light-Duty Vehicle GHG Emission Standards and CAFE rule (for 2012-2016) (75 Fed. Reg. 25324). Dept. of Transportation retains “exclusive authority” over CAFE standards. Authority of Sec. of Transportation does not include any authority with respect to GHGs and is unaffected by this Act.	The following remain in effect: <ul style="list-style-type: none"> Light-Duty Vehicle GHG Emission Standards and CAFE rule (for 2012-2016) (75 Fed. Reg. 25324), and Proposed Fuel Efficiency Standards for Medium and Heavy-Duty Engines and Vehicles rule (for 2014-2018) (75 Fed. Reg. 74152). 	The following remain in effect: <ul style="list-style-type: none"> Any action under CAA title II part A relating to vehicle emission standards. During the 2-year period, carbon dioxide and methane from a new vehicle or vehicle engine may be considered air pollutants under the CAA.	The following remain in effect: <ul style="list-style-type: none"> Light-Duty Vehicle GHG Emission Standards and CAFE rule (for 2012-2016) (75 Fed. Reg. 25324), and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles rule (for 2014-2018) (75 Fed. Reg. 74152). 	N/A
Motor vehicles	GHGs are excluded from CAA	GHGs are excluded from	N/A	N/A ^x	N/A

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(Waiver for state standards)	§209(b) waiver authority for new motor vehicles or new motor vehicle engines for model year 2017 or later.	CAA §209(b) waiver authority for new motor vehicles or new motor vehicle engines for model year 2017 or later.			
Impact on other provisions	No law or action relating to GHGs shall have any impact on the regulation of stationary sources under the Clean Air Act (CAA) title I or be considered to be the regulation of pollutants under that Act for any purpose other than regulation of GHGs for light-duty motor vehicles from 2012-2016, including for the purpose of issuing permits or establishing regulatory standards.	No listed exceptions shall cause a GHG to be subject to CAA title I, part C (prevention of significant deterioration) or considered an air pollutant for purposes of title V (permits).	During the 2-year period, no action taken by the Administrator (including that taken prior to the Act) shall be considered to make carbon dioxide or methane a pollutant subject to CAA for any source other than a new motor vehicle or new motor vehicle engine.	Before the end of the 2-year period, no action taken by the Administrator that causes GHGs to be pollutants subject to regulation under the CAA, except for purposes other than climate change, for any source other than a new motor vehicle or new motor vehicle engine, shall be legally effective. ^{xi}	N/A
Prior agency actions	Except as provided above, prior rules and actions from the Administrator to regulate GHGs for effects relating to atmospheric GHG concentrations shall have no force or effect, including: <ul style="list-style-type: none"> • Endangerment finding (74 Fed. Reg. 66496); • Johnson memo (Dec. 18, 2008) and reconsideration of memo (75 Fed. Reg. 17004); • all 2010 EPA rules under the CAA regarding GHGs; • mandatory reporting rule (74 Fed. Reg. 56260) and definition of term “emissions data” in Code of Federal Regulations; 	The following Agency actions shall have no legal effect: <ul style="list-style-type: none"> • Endangerment finding (74 Fed. Reg. 66496); • Johnson memo (Dec. 18, 2008) and reconsideration of memo (75 Fed. Reg. 17004); • all 2010 EPA rules under the CAA regarding GHGs; • mandatory reporting rule (74 Fed. Reg. 56260); 	During the 2-year period, no prior action shall be considered to make carbon dioxide or methane a pollutant subject to CAA for any source other than a new motor vehicle or new motor vehicle engine.	See <i>Impact on other provisions</i> above.	N/A
Prior agency actions (cont.)	<ul style="list-style-type: none"> • any final rule providing for a waiver under CAA §209 with respect to GHGs, or establishing any other GHG 	<ul style="list-style-type: none"> • any other federal action under the CAA occurring before the date of enactment of this section that applies a 			

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	<p>requirements under §177;</p> <ul style="list-style-type: none"> any final action taken by EPA regarding State Implementation Plans (SIPs), Federal Implementation Plans (FIPs), and policy guidance regarding permits for stationary sources of GHGs issued or taken before, on, or after the date of enactment of this Act; and any guidance, regulations, or policy regarding emissions of GHGs or climate change impacts of GHGs promulgated or issued by EPA under any federal law. 	<p>stationary source permitting requirement or emissions standard for a GHG to address climate change.</p>			
State implementation plans (SIPs)	<p>SIP provisions relating to GHGs:</p> <ul style="list-style-type: none"> shall not be federally enforceable; shall not be deemed a federal law; and shall be deemed to be stricken from the SIP. <p>Nor may the Administrator approve them or make them federally enforceable.</p>	<p>SIP provisions relating to GHGs and operating permit programs under CAA title V relating to limitations on GHG emissions to address climate change are:</p> <ul style="list-style-type: none"> not federally enforceable; not deemed part of federal law; and deemed stricken from the SIP, program, or permit.^{xii} <p>Nor may the Administrator approve them or make them federally enforceable.</p>	N/A	N/A	N/A
State laws (other than motor vehicle standards)	<p>The Act does not affect any state law or the authority of any state to adopt a law or regulation.</p> <p>However, no state shall have the authority to:</p> <ul style="list-style-type: none"> require any entity to procure, hold, or surrender allowances 	<p>Treatment of SIPs and state permitting programs do not limit or otherwise affect the authority of a state to adopt, amend, enforce, or repeal state laws and regulations pertaining to the emission of a</p>	N/A	N/A	N/A

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	<p>for the emission of GHGs that takes place outside of the state;</p> <ul style="list-style-type: none"> • otherwise regulate or tax, directly or indirectly, GHG emissions produced outside of the state; or • limit the importation of products or electricity into the state based on GHG emissions occurring outside the state. 	GHG.			
Additional Provisions	<p>Presidential findings and conclusions: The President or the head of a federal department or agency may not examine, make findings, or conclusions for the purpose of promulgating or issuing policy, guidance, or regulations to address the impacts of GHG emissions on climate change.</p> <p>Judicial review: Citizen suits allowed for anyone affected by a regulation, action, or consideration described. U.S. Court of Appeals for the D.C. Circuit shall have exclusive jurisdiction over any review of</p>	N/A	N/A	<p>Energy security: Advanced Energy Project Credit (§48(c) of the Internal Revenue Code) is extended in consultation with the Secretary of Energy to provide tax credits for qualifying advanced energy project sponsors. \$5 billion is allocated for 2011 for project credits and direct payments, up to \$1.5 billion of which may be allocated to qualified applications pending under original program.</p>	N/A
Additional Provisions (cont.)	<p>any federal, state, or other regulation, action, or consideration challenged.</p> <p>Litigation: No cause of action (including nuisance or any other legal theory) may be brought or maintained or relief granted for</p>				

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	<ul style="list-style-type: none"> any potential or actual contribution of a GHG to climate change; or any direct or indirect effect of potential or actual atmospheric concentration of a GHG. 				

ⁱ This amendment was first offered as S.Amdt 265 to S.493 on Mar. 29, 2011.

ⁱⁱ All but four Senate Republicans (Sens. Brown (R-MA), Collins (R-ME), Kirk (R-IL), and Snowe (R-ME)) are co-sponsors of S.482.

ⁱⁱⁱ Throughout the bill, the term “climate change” is used where the earlier discussion draft (released Feb. 2, 2011) referred to “possible climate change.”

^{iv} The clause regarding new motor vehicles or engines was added in the Mar. 31, 2011 revision.

^v Language specifying “direct or indirect” changes in land use was removed in the Mar. 31, 2011 revision.

^{vi} This exception, which was more parallel to the language in Sen. Barrasso’s bill in the discussion draft, was re-worded in the introduced bill.

^{vii} This provision was not contained in the discussion draft.

^{viii} This provision was not contained in the discussion draft.

^{ix} These exceptions were both added in the Mar. 30 revision.

^x The previous version of the amendment excluded GHGs from CAA §209(b) waiver authority for new motor vehicles or new motor vehicle engines for model year 2017 or later. This language was removed in the Mar. 30 revision.

^{xi} The language “causes GHGs to be pollutants subject to regulation” in the Mar. 30 revision replaces “attempts to classify a GHG as a pollutant.”

^{xii} This third bullet was not contained in the discussion draft.

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