

# Background

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## New EPA Inspector General Report: One More Reason to Reject Climate-Change Regulation

*Nicolas D. Loris*

**Abstract:** *The Environmental Protection Agency's Office of Inspector General (OIG) has released a report showing that the EPA did not comply with federal data guidelines when providing its technical support document (TSD) for the EPA's 2009 "endangerment finding." The EPA used the TSD to justify its endangerment finding and thus pave the way for the EPA's proposed carbon-dioxide regulations. This revelation should bring to light the problems with the EPA's approach to greenhouse-gas regulation: The EPA refuses to seriously consider broad dissenting science on the causes of climate change. This is a breach of its responsibility, all the more so when proposing such massive new regulations. Policymakers must have full and accurate information from all sides of the debate, not only that of the regulators.*

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In September, the Environmental Protection Agency (EPA) issued a report by its Office of Inspector General (OIG) pointing out that the EPA's technical support document (TSD) on greenhouse-gas emissions violated federal quality standards. The TSD provides the scientific backbone and technical analysis for the EPA's 2009 "endangerment finding," which states that carbon-dioxide and other greenhouse-gas emissions are a threat to public health and welfare for current and future generations. This endangerment finding gives the EPA authority under the Clean Air Act<sup>1</sup> to regulate greenhouse-gas emissions.

### Talking Points

- The new report by the Environmental Protection Agency's Office of Inspector General states that the EPA did not follow procedural guidelines for its endangerment finding that says carbon greenhouse-gas emissions are a threat to human health and welfare.
- While the OIG report does not question the validity of the science in the endangerment finding, the profusion of scientific dissent when it comes to the magnitude of anthropogenic global warming should have been sufficient reason for the EPA not to issue the endangerment finding in the first place.
- The EPA's regulation of CO<sub>2</sub> emission would impose massive energy taxes on Americans and inflict serious economic harm with minimal reduction in the earth's temperature.
- Several bills have been introduced in Congress to limit the EPA's authority to impose climate-change regulations. Congress should prevent unelected bureaucrats from using any regulatory act to implement CO<sub>2</sub> restrictions.

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214 Massachusetts Avenue, NE  
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(202) 546-4400 • [heritage.org](http://heritage.org)

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The OIG does not question the scientific validity of the various studies cited in the EPA's TSD, but faults the EPA for defying the Office of Management and Budget's (OMB) specifications required for a "highly influential scientific assessment."<sup>2</sup>

The massive economic costs—and minimal environmental benefits—associated with decisions made by unelected bureaucrats at the EPA who bypass the legislative process to regulate carbon-dioxide emissions are reason enough for Congress to intervene. The OIG report provides yet another strong reason to prevent the EPA and other federal regulators from creating regulations based on claims of the danger of greenhouse-gas emissions. Congress should vote to prevent the EPA from regulating greenhouse-gas emissions, and foster a transparent debate about the EPA's endangerment finding and climate change generally.

### **EPA Refuses to Reconsider Endangerment Finding**

In April 2009, the EPA proposed an endangerment finding<sup>3</sup> that stated that global warming and climate change pose a serious threat to public health and safety, and that, thus, almost any entity that emits carbon dioxide and other greenhouse gases could be regulated under the Clean Air Act. The agency has since begun the process of regulating greenhouse-gas emissions, targeting fossil-fuel power plants and petroleum refineries first. Climatologists and industry groups petitioned the EPA,

arguing that scientific evidence was not conclusive enough to issue the endangerment finding. In 2010, the EPA rejected these petitions to reconsider the finding, claiming that the "petitioners have failed to consider or rebut" the evidence supporting the Intergovernmental Panel on Climate Change's conclusions on climate change.<sup>4</sup> The EPA asserted that:

It is useful to describe the process EPA followed in exercising its scientific judgment in making the Endangerment Finding. EPA did not passively and uncritically accept a scientific judgment and finding of endangerment supplied to it by outsiders. Instead, EPA evaluated all of the scientific information before it, determined the current state of the science on greenhouse gases, the extent to which they cause climate change, how climate change can impact public health and public welfare, and the degree of scientific consensus on this science. EPA applied this science to the legal criteria for determining endangerment, i.e., whether greenhouses gases cause, or contribute to, air pollution that may reasonably be anticipated to endanger public health or welfare... EPA properly and carefully exercised its own judgment in all matters related to the Endangerment Finding.<sup>5</sup>

In fact, Section 202(a)(1) of the Clean Air Act states that the EPA administrator must use independent "judgment" when determining causes and con-

1. Clean Air Act, 42 U.S.C. § 7521, Section 202(a).
2. As defined by the OMB, a "highly influential scientific assessment" is one that "could have a potential impact of more than \$500 million in any year on either the public or private sector, or is novel, controversial, or precedent setting, or has significant interagency interest." OMB, "Revised Information Quality Bulletin for Peer Review," April 15, 2004, at [http://m.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/peer\\_review041404.pdf](http://m.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/peer_review041404.pdf) (November 3, 2011).
3. This endangerment finding was the first step in a long regulatory process in which the EPA administrator considered scientific evidence and public comments to determine whether greenhouse-gas emissions "endanger both the public health and the public welfare of current and future generations."
4. U.S. Environmental Protection Agency, Office of Inspector General, "Procedural Review of EPA's Greenhouse Gases Endangerment Finding Data Quality Processes," September 26, 2011, at <http://www.epa.gov/oig/reports/2011/20110926-11-P-0702.pdf> (November 2, 2011).
5. "Part II: Environmental Protection Agency: EPA's Denial of the Petitions to Reconsider the Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule," *Federal Register*, Vol. 75, No. 156 (August 13, 2010), at <http://www.epa.gov/climatechange/endangerment/downloads/response-decision.pdf> (November 2, 2011).

tributors to air pollution that may endanger human health and public safety.<sup>6</sup>

### Inspector General's Report Finds Fault

At the request of Senator James Inhofe (R-OK), ranking member of the Senate Committee on Environment and Public Works, the EPA's OIG was to determine whether the EPA followed OMB requirements for the technical data justifying its endangerment finding that greenhouse-gas emissions are a threat to human health and public safety. The OIG report, released on September 26, found that, when reviewing its TSD, the EPA did not comply with OMB peer-review requirements for "highly influential scientific assessments." The EPA states that it "did not consider the TSD a highly influential scientific assessment" as defined by the OMB.<sup>7</sup>

The Inspector General noted that "We concluded that the technical support document that accompanied EPA's endangerment finding is a highly influential scientific assessment and thus required a more rigorous EPA peer review than occurred. EPA did not certify whether it complied with OMB's or its own peer review policies in either the proposed or final endangerment findings as required."<sup>8</sup> Two of the requirements that the EPA failed to meet were (1) the agency failed to publicly report its review results and (2) one of the 12 federal climate-change scientists reviewing the document was an EPA employee.

### The EPA's Contradictory Response

The Environmental Protection Agency argued that it did not follow the OMB's process because the

2009 endangerment finding provided a summary of studies already vetted through a peer-review process and thus did not fall under the category of "scientific assessment." The EPA stated that the summarized studies were reviewed by the Intergovernmental Panel on Climate Change (IPCC), the U.S. Climate Change Science Program/U.S. Global Change Research Program (USGCRP), and the National Research Council (NRC), that the data sets used<sup>9</sup> are objective, and that the studies have been extensively peer-reviewed.<sup>10</sup>

Specifically, the OIG report states:

The Agency disagreed with our conclusion in the draft report that the TSD was a highly influential scientific assessment and thus subject to certain peer review requirements that EPA did not implement. EPA responded that the TSD does not meet the OMB definition of a scientific assessment in that no *weighing* of information, data, and studies occurred in the TSD. EPA maintained that this process had already occurred in the underlying assessments, where the scientific synthesis occurred and where the state of the science was assessed. EPA stated that the TSD is not a scientific assessment, but rather a document that summarized in a straightforward manner the key findings of NRC, USGCRP, and IPCC.<sup>11</sup>

The EPA's response to the OIG report runs directly counter to its justification for refusing to reconsider its endangerment finding. When rejecting reconsideration of its endangerment finding, the EPA said it

6. Clean Air Act, 42 U.S.C. § 7521(a)(1).

7. U.S. Environmental Protection Agency, Office of Inspector General, "Procedural Review of EPA's Greenhouse Gases Endangerment Finding Data Quality Processes."

8. Press release, "Statement of Inspector General Arthur A. Elkins, Jr., on the Office of Inspector General (OIG) report *Procedural Review of EPA's Greenhouse Gases Endangerment Finding Data Quality Processes*," Environmental Protection Agency, September 28, 2011, at [http://www.epa.gov/oig/reports/2011/IG\\_Statement\\_Greenhouse\\_Gases\\_Endangerment\\_Report.pdf](http://www.epa.gov/oig/reports/2011/IG_Statement_Greenhouse_Gases_Endangerment_Report.pdf) (November 2, 2011).

9. Compiled by the Climate Research Unit, the National Oceanic and Atmospheric Administration, and the National Aeronautics and Space Administration.

10. U.S. Environmental Protection Agency, Office of Inspector General, "Procedural Review of EPA's Greenhouse Gases Endangerment Finding Data Quality Processes."

11. *Ibid.*

“exercised scientific judgment”—but when responding to the OIG report, the EPA called the TSD merely a summary of existing findings.

### EPA: Ignoring Dissenting Science

Whether it was providing independent judgment or summarizing existing studies, the EPA should reconsider the endangerment finding because there has been plenty of dissent among the scientific community on the causes and magnitude of climate change. The objections from respected climatologists with regard to the underlying documents supporting the EPA’s endangerment finding make a good case for why the EPA should have never issued the endangerment finding in the first place.

In 2001, for instance, Richard Lindzen, professor of meteorology at the Massachusetts Institute of Technology, participated in a 12-member panel of the National Academy of Sciences and produced, at the request of the White House, a report on climate change. Lindzen summarized the panel’s findings:

Our primary conclusion was that despite some knowledge and agreement, the science is by no means settled. We are quite confident (1) that global mean temperature is about 0.5 degrees Celsius higher than it was a century ago; (2) that atmospheric levels of carbon dioxide have risen over the past two centuries; and (3) that carbon dioxide is a greenhouse gas whose increase is likely to warm the earth (one of many, the most important being water vapor and clouds). But—and I cannot stress this enough—we are not in a

position to confidently attribute past climate change to carbon dioxide or to forecast what the climate will be in the future.<sup>12</sup>

In 2005, Colorado State University professor of atmospheric science William Gray testified before the Senate Committee on Environment and Public Works, saying: “I have closely followed the greenhouse gas warming arguments. From what I have learned of how the atmosphere functions in over 50 years of study and forecasting, I have been unable to convince myself that a doubling of human-induced greenhouse gases can lead to anything but quite small and likely insignificant amounts of global warming—about 0.2 to 0.3 degree Celsius.”<sup>13</sup>

The IPCC is not immune from criticism either. In *Climate Change Reconsidered*, atmospheric physicist Fred Singer and other scientists acknowledge that anthropogenic emissions play a role in the warming of the global temperature, but conclude that it is not a substantial one—contrary to the arguments made by the IPCC.<sup>14</sup> Professor Lindzen emphasized that the IPCC’s models fail to take into account naturally occurring weather phenomena, such as El Niño, the Pacific decadal oscillation, or the Atlantic multi-decadal oscillation.<sup>15</sup>

Other prominent scientists and climatologists called government regulation of greenhouse-gas emissions “irresponsible and immoral” because of the lack of credible evidence that such emissions threaten to human health or public welfare.<sup>16</sup> For example, a senior career economist in the EPA’s National Center for Environmental Economics (NCEE) expressed concern with the endangerment

12. Richard S. Lindzen, “Scientists’ Report Doesn’t Support the Kyoto Treaty,” *The Wall Street Journal*, June 11, 2001, at <http://www-eaps.mit.edu/faculty/lindzen/OpEds/LindzenWSJ.pdf> (November 2, 2011).
13. Hearings, *Statement of Dr. William Gray: The Role of Science in Environmental Policy-Making*, Committee on Environment and Public Works, U.S. Senate, September 28, 2005, at [http://epw.senate.gov/hearing\\_statements.cfm?id=246768](http://epw.senate.gov/hearing_statements.cfm?id=246768) (November 2, 2011).
14. Craig Idso and S. Fred Singer, *Climate Change Reconsidered: 2009 Report of the Nongovernmental International Panel on Climate Change (NIPCC)* (Chicago, Ill.: The Heartland Institute, June 2009), at [http://hatch.senate.gov/public/\\_files/ClimateChangeReconsidered.pdf](http://hatch.senate.gov/public/_files/ClimateChangeReconsidered.pdf) (November 2, 2011).
15. Richard S. Lindzen, “The Climate Science Isn’t Settled,” *The Wall Street Journal*, November 30, 2009, at <http://online.wsj.com/article/SB10001424052748703939404574567423917025400.html> (November 2, 2011).
16. Kesten C. Green, J. Scott Armstrong, and Willie Soon, “Climate Change Forecasts Are Useless for Policymaking,” Enter Stage Right, March 9, 2009, at <http://www.enterstageright.com/archive/articles/0309/0309climatechange forecasts.htm> (November 2, 2011).

finding and asked to present new research critical of the justification for the finding. The NCEE director refused to pass on the research, replying, “The administrator and the administration has [sic] decided to move forward on endangerment, and your comments do not help the legal or policy case for this decision.”<sup>17</sup> These are only a handful of many experts that the EPA chose to ignore when issuing its 2009 endangerment finding.

### **EPA Regulation: All Pain, No Gain**

Even setting aside the profusion of scientific dissent from the EPA’s endangerment finding, or the supposed effects of CO<sub>2</sub> on climate, the EPA’s regulations will not reduce CO<sub>2</sub> emissions enough to have any meaningful effect. Attempting to reduce CO<sub>2</sub> emissions unilaterally will have an insignificant impact on global emissions. China and India’s CO<sub>2</sub> emissions are rapidly increasing as they continue to expand their economies—and have no intention of scaling back economic growth to curb emissions. Even if the EPA were to reduce U.S. carbon emissions 83 percent below 2005 levels by 2050 (which recent cap-and-trade bills required), it would constitute a negligible reduction in emissions worldwide.<sup>18</sup>

The EPA’s regulations would, however, inflict serious economic harm. Although the EPA is targeting the largest emitters of greenhouse gases first, the financial burden would be borne by every American. Two of the first major targets of EPA regulations are fossil-fuel power plants and petroleum refineries, and since the U.S. obtains 85 percent of its energy from fossil fuels, regulating these entities would significantly increase the cost of energy for all Americans. Not only would these rules directly raise the cost of electricity, gasoline, diesel fuel, and home heating oil, they would also hurt American businesses because higher energy costs are incor-

porated into the cost of virtually everything. Businesses pass such costs on to consumers—and the result is a dramatically slower economy and lost jobs. Many of these jobs would be lost when businesses move overseas where energy is cheaper.

### **Prohibit All Climate-Change Regulations**

Even before the September OIG report, many Members of Congress had introduced legislation to repeal the endangerment finding and prevent federal bureaucrats from regulating carbon dioxide emissions. In light of the report, these pieces of legislation deserve close and timely attention. Introduced by Representatives Fred Upton (R-MI) and Ed Whitfield (R-KY), the House of Representatives passed the Energy Tax Prevention Act of 2011, which would repeal the EPA’s endangerment rule and block the EPA from regulating CO<sub>2</sub> emissions. Specifically, the Energy Tax Prevention Act would “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.”<sup>19</sup> Senator Inhofe introduced companion legislation in the Senate, but the bill fell 10 votes short of the 60 needed for passage.

The most effective and comprehensive approach to prevent government bureaucrats from regulating greenhouse-gas emissions would be to permanently prohibit any federal agency, not only the EPA, from using emissions as a reason to slow or prevent economic activity. Senator John Barrasso (R-WY) introduced a bill that would prevent the EPA and other federal regulators, such as the U.S. Fish and Wildlife Service, from using any federal regulatory act—including the Clean Air Act, the Endangered

17. Excerpt contained in letter from Representative Joe Barton (R-TX) to EPA Administrator Lisa Jackson, June 24, 2009, at [http://republicans.energycommerce.house.gov/Media/file/News/062409\\_Letter\\_to\\_EPA\\_on\\_Report\\_Suppression.PDF](http://republicans.energycommerce.house.gov/Media/file/News/062409_Letter_to_EPA_on_Report_Suppression.PDF) (November 2, 2011).

18. Chip Knappenberger, “Climate Impacts of Waxman–Markey (the IPCC-Based Arithmetic of No Gain),” MasterResource, May 6, 2009, at <http://masterresource.org/?p=2355> (November 2, 2011).

19. “Energy Tax Prevention Act of 2011, H.R. 910,” March 3, 2011, at <http://energycommerce.house.gov/media/file/PDFs/ETPA/ETPA.pdf> (November 2, 2011).

Species Act, the Clean Water Act, and the National Environmental Policy Act—to impose CO<sub>2</sub>-emissions restrictions based on climate studies.<sup>20</sup> Barrasso's Defending America's Affordable Energy and Jobs Act would “preempt regulation of, action relating to, or consideration of greenhouse gases under Federal and common law on enactment of a Federal policy to mitigate climate change.” This bill would not only prevent the economic pain that American consumers would incur from greenhouse-gas regulations, it would also put the decision-making authority for such major regulatory policy back where it belongs—in the hands of Congress.

### **Don't Delay, Act Now**

In addition to the substantial economic costs and minimal environmental benefits, and disregarding the fact that many climatologists question the validity of the EPA's endangerment finding, the criticisms

in the OIG's new report are another reason to pull the plug on the EPA's regulation of greenhouse gases. Reining in the EPA's regulatory excesses with respect to carbon dioxide and other greenhouse-gas emissions is long overdue and should be a top priority for Congress. Congress should insist on preventing federal regulators from mandating greenhouse-gas-emissions caps, or from using greenhouse-gas emissions as a means to promulgate a rule. The American public elected representatives to make these decisions, and they have wisely rejected previous attempts at over-regulation. Placing the regulation of greenhouse-gas emissions in the hands of unelected bureaucrats would be an immense—and unacceptable—expansion of government power with monumental cost and few benefits for anyone.

—*Nicolas D. Loris is a Policy Analyst in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation.*

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20. “Defending America's Affordable Energy and Jobs Act of 2011, S. 228,” U.S. Senate, January 31, 2011, at [http://barrasso.senate.gov/public/\\_files/Defending\\_America%27s\\_Affordable\\_Energy\\_and\\_Jobs\\_Act.pdf](http://barrasso.senate.gov/public/_files/Defending_America%27s_Affordable_Energy_and_Jobs_Act.pdf) (November 2, 2011).