

Avoiding a Collision with Congress

While EPA is required by law to move forward with greenhouse gas regulations under the Clean Air Act, Congress has taken steps recently to adopt cap-and-trade legislation. EPA and Congress are on parallel tracks for now, but there is the potential for redundancy and conflict that will drive up the cost of greenhouse gas reduction

Command-and-Control Regulations Are Costly, But Some May Be Required

For decades, economists have generally agreed that whenever possible, it is better to use market based regulations—like cap-and-trade systems—to achieve environmental goals rather than command-and-control regulations. Market based regimes give greater flexibility to businesses by demanding economy-wide reductions, but allowing firms to reduce pollution in the cheapest possible manner. Command-and-control regulations, however, require central regulators to prescribe conduct for huge classes of economic actors, and often impose costly requirements that are not necessary to achieve environmental goals.

However, the language of the Clean Air Act gives the EPA only limited flexibility, and there are cases where some form of command-and-control regulation will be necessary to come into compliance with the law. In a recent decision in the Court of Appeals for the D.C. Circuit, a large

interstate pollution trading program was struck down because it failed to comply with the statutory terms of the Act—EPA must be careful to avoid a similar fate for its regulations under the Clean Air Act.

In order to maximize the net benefits of greenhouse gas regulations, EPA should, whenever possible, adopt market-based incentives. Those market-based programs must be carefully tailored to adhere to the language of the Clean Air Act, while giving businesses maximum flexibility to achieve compliance at the lowest possible costs. However, where the Act clearly requires command-and-control regulations, EPA must fulfill its obligation to carry out the wishes of Congress by adopting those regulations.

Best Options for Mobile Source Obligations

Under the Clean Air Act, once EPA has finalized its endangerment finding for automobiles, it will be required to issue emissions standards. These types of standards—which are command-and-control rather than market-based—could ultimately reduce the efficiency of a cap-and-trade system. Under a cap-and-trade, the total economy wide emissions are set, so emissions standards for cars would not reduce the total amount of greenhouse gases that are produced—it only shifts emissions around. To avoid costs being imposed without greenhouse gas reduction benefits, EPA should tie its auto emission standards to existing standards, such as CAFE standards or standards adopted by California.

Because aircraft have the capacity to travel internationally and refuel in countries that do not have cap-and-trade restrictions on vehicle fuel, command-and-control regulations for aircraft can deliver climate benefits. Such regulations could include: improving aviation operations and procedures, setting fuel efficiency standards or GHG emissions standards, or mandating more efficient aircraft design standards. Marine vessels that travel international would also benefit from greenhouse gas emissions standards.

Because other nonroad vehicles—such as lawnmowers—cannot refuel internationally, all

fuel purchased to run them will be subject to a domestic cap-and-trade legislation. Because there is no value-added for command-and-control regulations such as fuel efficiency, GHG emissions, or vehicle design standards, EPA should exercise its discretion not to regulate in this area. Instead, EPA should consider methods of providing information to manufacturers and consumers so they can decide how best to reduce their fuel consumption.

Best Options for Stationary Source Obligations

Many of the mandatory provisions of the Clean Air Act for stationary sources will interfere with the efficient functioning of a cap-and-trade system. Regulations that essentially require emissions technologies to be adopted limit the flexibility given to sources to comply with economy-wide emissions targets, imposing costs without delivering environmental benefits. However, EPA can use its discretion to limit many of the negative economic consequences for these mandatory provisions, and Congress can ultimately exempt greenhouse gases from the mandatory provisions of the Clean Air Act when it adopts cap-and-trade legislation.

Once greenhouse gases become a regulated pollutant, new major emitters—defined as sources that emit more than 250 tons of greenhouse gases—will be required to adopt “best available technology.” EPA can ensure that this regulation does not impose unnecessary costs on small emitters by: (1) defining “modification” narrowly for greenhouse gases so small increases in emission will not subject firms to regulation; (2) adopt a general permit scheme for small sources; (3) phase-in permit requirement to target largest sources first; (4) use presumptive standards for best available technology that focus on energy efficiency.

EPA will also, within a reasonable time, have a duty to adopt new source performance standards, but has broad authority over the sequencing of which categories of sources to address. It should begin review of GHG emissions from already-listed source categories with nitric acid plants, petroleum refineries, and other industrial sources whose emissions may not be fully covered under the cap-and-trade program. This way, EPA will ensure that the standards will serve as a useful supplement to a cap-and-trade program rather than imposing unnecessary costs.