



BYRON L. DORGAN
CHAIRMAN

DPC Staff Contact: Ryan Mulvenon (202) 224-3232
DPC Press Contact: Barry Piatt (202) 224-0577

May 26, 2010

Available Online: dpc.senate.gov

S.J. Res. 26, Resolution of Disapproval of EPA’s Endangerment and Cause or Contribute Findings

Background and Summary	1
Major Provisions	1
Legislative History	2
Senate Floor Consideration.....	2
Procedure After Senate Consideration	3
Expected Amendments	4
EPA Analysis	4
Additional Reading	4
Administration Position.....	4

Background and Summary

The Senate has entered into a unanimous consent agreement to consider **S.J. Res. 26** on June 10, 2010, which would disapprove of the Environmental Protection Agency's (EPA) endangerment and cause or contribute findings. The EPA's action responds to Supreme Court's order in *Massachusetts v. EPA* that it make a determination about whether or not greenhouse gases as pollutants could "reasonably be anticipated to endanger public health or welfare" pursuant to Section 202 (a) of the *Clean Air Act*.

The EPA responded to the direction provided by the Supreme Court by proposing to find that:

- The emission of six greenhouse gases (carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride) threaten the public health and welfare of current and future generations; and
- The combined emissions of carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons from new motor vehicles and motor vehicle engines contribute to the atmospheric concentrations of these key greenhouse gases and, hence, to the threat of climate change.

This judgment was based on scientific findings which show that:

- Concentrations of greenhouse gases are at unprecedented levels compared to the recent and distant past;
- The effects of climate change observed to date and projected to occur in the future will have impacts on the public's health and welfare; and
- Emissions of greenhouse gases from on-road vehicles regulated by the *Clean Air Act* contribute to climate change.

EPA Administrator Jackson signed the endangerment and cause or contribute findings on December 7, 2009, after the EPA had held a 60-day comment period, two public hearings, and reviewed 380,000 public comments. The EPA Administrator's finding became effective on January 14, 2010.

Major Provisions

S.J. Res. 26 states that "Congress disapproves the rule submitted by the Environmental Protection Agency relating to the endangerment finding and the cause or contribute findings for greenhouse gases under section 202(a) of the *Clean Air Act* and that such rule shall have no force or effect."

Legislative History

On January 21, 2010, under the authority granted to Congress by the *Congressional Review Act*, Senator Murkowski introduced a resolution that disapproved of the EPA's endangerment finding.

On January 21, 2010, under the authority granted to Congress by the *Congressional Review Act*, Senator Murkowski introduced a resolution that disapproved of the EPA's endangerment finding.

On May 25, 2010, the Senate entered into a unanimous consent agreement with respect to the consideration of **S.J. Res. 26**. The following outlines the terms of that unanimous consent agreement.

On Thursday, June 10, the Republican Leader or his designee will be recognized to move to proceed to **S.J. Res. 26**. There will be up to 6 hours for debate on the motion to proceed to the joint resolution, with the time equally divided and controlled between Senators **Boxer** and Murkowski or their designees. Upon the use or yielding back of time, the Senate will proceed to vote on the motion to proceed.

If the motion is successful, there would be up to 1 hour for debate on the joint resolution and upon the use or yielding back of time the Senate would proceed to vote on passage of the joint resolution.

If the motion to proceed is defeated, then no further motions to proceed to the joint resolution would be in order.

No amendment or motion on the subject of the EPA greenhouse gas regulations or relating to the endangerment finding is in order prior to consideration of the motion to proceed to **S.J. Res. 26**.

No amendments are in order to the joint resolution and all other provisions of the statute governing consideration for the joint resolution remain in effect during the pendency of this agreement.

Senate Floor Consideration

The *Congressional Review Act* (CRA) established a set of procedures for the consideration of resolutions of disapproval on the Senate floor. The following information summarizes those established CRA procedures.

The joint resolution is introduced and subsequently is referred to the appropriate committee of jurisdiction. If a committee does not report the resolution, it can be

discharged from committee by a petition signed by 30 Senators. After the joint resolution has been reported by the appropriate committee or discharged by petition, it is placed on the Senate calendar.

Once the joint resolution is placed on the Senate calendar, it is in order to consider a motion to proceed to the consideration of the joint resolution at any time. The CRA provides that all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable and is also not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business.

The CRA also provides that a motion to reconsider the vote by which the motion is agreed to or not agreed to is also not in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until the joint resolution is disposed of.

If the motion to proceed were agreed to, debate on the joint resolution would be limited to no more than 10 hours (Debate may be less than 10 hours if the Senate agrees to a non-debatable motion to limit debate). Amendments and motions to recommit are not in order. The 10 hours of debate would be divided equally between those favoring and those opposing the joint resolution. Immediately following the conclusion of debate on the joint resolution, the Senate is required to vote on final passage of the joint resolution.

Procedure After Senate Consideration

If **S.J. Res 26** were to reach the President's desk and if the President were to veto the joint resolution, the *Congressional Review Act* provides no expedited procedure for overriding a veto of a joint resolution of disapproval. However, a veto does trigger a 30 day of session waiting period during which the regulation will not become effective, pending possible congressional action on the veto. (As with other vetoes, the question of taking up the veto message is not subject to extended debate, but the Senate is not required to consider the veto.)

The Senate generally enters into a unanimous consent agreement to limit time for debate on the question of overriding the veto. However, the question of overriding a veto is debatable under the rules of the Senate and without a unanimous consent agreement the question could be debated as long as any Senator sought recognition to discuss it (unless cloture is filed and invoked on the veto).

In the event that **S.J. Res. 26** were enacted into law (approved by the Senate, House, and signed by the President or allowed to become law without his signature or via a successful veto override), the EPA would be prohibited from:

- Reissuing the disapproved finding; and

- Issuing any future finding that was substantially similar to the disapproved finding.

The EPA would only be able to reissue the finding or issue a substantially similar finding if Congress specifically gave EPA the authority to do so after the date of the joint resolution were enacted into law.

Expected Amendments

Pursuant to the *Congressional Review Act*, the consideration of amendments on the Senate floor is not in order. Although the *Congressional Review Act* does not expressly prohibit the committee of jurisdiction (in this case EPW) from recommending amendments to the Senate its prohibition against amendments on the floor would presumably prevent the Senate from considering any committee amendments.

EPA Analysis

EPA-HQ-OAR-2009-0171 is not a major rule.

EPA has completed a regulatory impact analysis on the proposed rulemaking to establish light-duty vehicle greenhouse gas emission standards and corporate average fuel economy standards. This document can be accessed by clicking [here](#).

Additional Reading

Senate Democratic Policy Committee, “The Consequences and Significance of the Murkowski Disapproval Resolution,” May 13, 2010, available by clicking [here](#).

Senate Democratic Policy Committee, “The Oil Consumption and Greenhouse Gas Emission Metrics of the Joint EPA/NHTSA Fuel Economy Standards,” May 13, 2010, available by clicking [here](#).

Congressional Research Service, “Disapproval of Regulations by Congress: Procedure Under the Congressional Review Act,” October 10, 2001, available by clicking [here](#)

Administration Position

On June 8, 2010, the Obama administration issued a Statement of Administration Policy (SAP) on **S.J. Res. 26**. The SAP states that “if the President is presented with this Resolution of Disapproval, which would seriously disrupt EPA’s ability to address

the threat of GHG pollution, as well as the multi-agency Federal GHG and fuel economy program, his senior advisors would recommend that he veto the Resolution.”

The full SAP can be accessed can be accessed by click [here](#).