Last week, the House passed HR 1582 on a 232-181 vote. The law is designed to restrict EPA regulation of power plants, but the House also adopted an amendment that takes a swipe at environmental economists.

HR 1582 is mercifully brief and to the point. When EPA proposes a rule that would impose over $1 billion in economic costs, the Secretary of Energy has to assess the impacts of the rule on the energy system and decide whether EPA can actually issue the rule.

Representative Murphy successfully offered an amendment relating to cost-benefit analysis. Under the amendment, the government cannot consider the social cost of carbon "in any cost-benefit analysis of any regulatory action." Although House Republicans purported to be unhappy with the procedures used for a recent revision of the estimate for the social cost of carbon, Murphy's amendment swept much more broadly. It includes "any other estimate of the monetized damages associated with an incremental increase in carbon dioxide emissions in a given year." In effect, Congress is setting climate damages at zero for purposes of cost-benefit analysis.

The Murphy Amendment would have broad effects if EPA was using statutes that mandate the use of cost-benefit analysis. But such statutes are relatively sparse. Use of cost-benefit analysis is a presidential rather than statutory requirement, so the President can simply loosen that requirement when climate change is involved.

The body of the bill raises an interesting set of legal questions, which might make for an interesting exam in an administrative law class:

1. Suppose EPA concludes that a rule will cost less than $1 billion. Is this determination subject to judicial review? One argument would be that this is a procedural requirement in order for EPA to finalize the rule, and that violation of the procedural requirement provides a basis for litigation by anyone who might have been benefitted from the Secretary's review.

2. What about judicial review of the Secretary of Energy's ultimate determination? The statute doesn't discuss judicial review. The argument against judicial review is that a positive determination by the Secretary is not explicitly tied to the legality of the rule, only to EPA's decision to finalize it. But is that too fine a distinction?

3. Can EPA avoid the law by cutting a rule into smaller pieces – for instance, by

adopting similar but slightly different rules covering different parts of the industry or different time periods? This is a tactic that has been used to avoid the need for an environmental impact statement, for instance.

This would all be lots of fun for lawyers. But there seems to be no chance that the bill will actually pass the Senate or be signed by the President. Still, it makes for a pretty good exam question or class hypothetical.