

Advance Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions under the Clean Air Act

EPA-HQ-OAR-2008-0318, June 2008

The U.S. Environmental Protection Agency (EPA) is inviting comment from all interested parties on options and questions to be considered for possible greenhouse gas regulations under the Clean Air Act. EPA is issuing an advance notice of proposed rulemaking (ANPR) to gather information and determine how to proceed.

The Advance Notice

The ANPR is one of the steps EPA has taken in response to the U.S. Supreme Court's decision in *Massachusetts v. EPA*. The Court found that the Clean Air Act (CAA) gives EPA authority to regulate tailpipe greenhouse gas emissions (GHG) because these gases fit the Act's definition of an air pollutant. The ANPR evaluates the broad ramifications of potential responses to the Supreme Court's decision involving regulation of GHGs under the CAA, which covers air pollution from both stationary and mobile sources.

Key Issues for Discussion and Comment in the ANPR:

- CAA provisions that may be appropriate for regulating GHGs and advantages and disadvantages of regulating GHGs under those provisions;
- How a decision to regulate GHG emissions under one section of the CAA could or would lead to regulation of GHG emissions under other sections of the Act, including sections establishing permitting requirements for stationary sources of air pollutants;
- Issues relevant for Congress to consider for possible future climate legislation and the potential for overlap between future legislation and CAA regulation;
- Scientific information relevant to, and the issues raised by, an endangerment analysis of new motor vehicle GHG emissions, and what vehicle standards would be appropriate if a positive endangerment finding were made; and,
- Information regarding potential regulatory approaches and technologies for reducing GHG emissions.

EPA will accept public comment on the ANPR for 120 days following its publication in the Federal Register.

BACKGROUND

In April 2007, the Supreme Court concluded that GHGs meet the CAA definition of an air pollutant. Therefore, EPA has authority under the CAA to regulate GHGs subject to the endangerment test for new motor vehicles – an Agency determination that GHG emissions from new motor vehicles cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

The Court also ruled that EPA must decide whether new motor vehicle GHG emissions meet the motor vehicle endangerment test, or explain why scientific uncertainty is so

profound that it prevents making a reasoned judgment on such a determination. If EPA finds that new motor vehicle GHG emissions meet the relevant endangerment test, the CAA requires the Agency to regulate those emissions.

A decision to regulate GHG emissions for motor vehicles impacts whether other sources of GHG emissions would need to be regulated as well, including establishing permitting requirements for stationary sources of air pollutants.

On May 14, 2007, in response to the Supreme Court's decision, the President issued an Executive Order to control GHG emissions from motor vehicles, nonroad vehicles, and nonroad engines. EPA joined a cross-agency effort to develop new regulations that would cut GHG emissions from motor vehicles and their fuels, and EPA began an endangerment determination. With the enactment of the Energy Independence and Security Act (EISA) on December 19, 2007, the policy context for the response to the Supreme Court decision changed. This ANPR accounts for those changes and asks the public to help EPA evaluate whether there is a regulatory path available through the Clean Air Act to control emissions of GHGs.

Public Participation Opportunities

EPA welcomes comments on this ANPR. For instructions on submitting written comments, please see the Federal Register notice. It is available from the EPA Air Docket by calling 202-566-1742; please refer to Docket No. EPA-HQ-OAR-2008-0318.

To download the ANPR on EPA's website, go to:

<http://epa.gov/climatechange/anpr.html>.

For more information on GHG emissions from transportation, go to:

<http://epa.gov/otaq/climate/regulations.htm>.

Further information on this action and other background information is available at: <http://epa.gov/climatechange/anpr.html>, EPA's electronic public docket and comment system, or in hard copy at the EPA Docket Center, Environmental Protection Agency, Room 3334, 1301 Constitution Avenue, NW, Washington, DC (reference Docket No. EPA-HQ-OAR-2008-0318).

How to Comment

- Comments should be identified by the following Docket ID Number: EPA-HQ-OAR-2008-0318
- Comments should be submitted by one of the following methods:
 - Federal eRulemaking Portal (<http://www.regulations.gov/>): Follow the on-line instructions for submitting comments)
 - Email: a-and-r-Docket@epa.gov
 - Fax: (202) 566-9744
 - Mail: U.S. Postal Service, send comments to:

Docket EPA-HQ-OAR-2008-0318, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T
1200 Pennsylvania Avenue, NW
Washington, DC 20460.

Please include a total of two copies.

- Hand Delivery: In person or by courier, deliver comments to:
EPA Docket and Information Center, Public Reading Room, EPA West Building, Room 3334
1301 Constitution Avenue, NW
Washington, DC 20004.

Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.