

The Administrator signed the following notice on July 11, 2008 and we are submitting it for publication in the Federal Register. While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming Federal Register publication or on GPO's Web Site. You can access the *Federal Register* at: www.gpoaccess.gov/fr/index.html. When using this site, note that "text" files may be incomplete because they do not include graphics. Instead, select "Adobe Portable Document File" (PDF) files.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[EPA-HQ-OAR-2008-0318; FRL-8694-2]

RIN 2060-AP12

Regulating Greenhouse Gas Emissions under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This advance notice of proposed rulemaking (ANPR) presents information relevant to, and solicits public comment on, how to respond to the U.S. Supreme Court's decision in Massachusetts v. EPA. In that case, the Supreme Court ruled that the Clean Air Act (CAA or Act) authorizes regulation of greenhouse gases (GHGs) because they meet the definition of air pollutant under the Act. In view of the potential ramifications of a decision to regulate GHGs under the Act, the notice reviews the various CAA provisions that may be applicable to regulate GHGs, examines the issues that regulating GHGs under those provisions may raise, provides information regarding potential regulatory approaches and technologies for reducing GHG emissions, and raises issues relevant to possible legislation and the potential for overlap between legislation and CAA regulation. In addition, the notice describes and solicits comment on petitions the Agency has received to regulate GHG emissions from ships, aircraft and nonroad vehicles such as farm and construction equipment. Finally, the notice discusses several other actions concerning stationary sources for which EPA has received comment regarding the regulation of GHG emissions.

The implications of a decision to regulate GHGs under the Act are so far-reaching that a number of other federal agencies have offered critical comments and raised serious questions during interagency review of EPA's ANPR. Rather than attempt to forge a consensus on matters of great complexity, controversy, and active legislative debate, the Administrator has decided to publish the views of other agencies and to seek comment on the full range of issues that they raise. These comments appear in the Supplemental Information, below, followed by the June 17 draft of the ANPR preamble prepared by EPA, to which the comments apply. None of these documents represents a policy decision by the EPA, but all are intended to advance the public debate and to help inform the federal government's decisions regarding climate change.

DATES: Comments must be received on or before [insert date 120 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2008-0318, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: a-and-r-Docket@epa.gov
- Fax: 202-566-9744
- Mail: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.

- Hand Delivery: EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., 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.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2008-0318. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting

comments, go to Section VII, Public Participation, of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. 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 Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Joe Dougherty, Office of Air and Radiation, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460; telephone number: (202) 564-1659; fax number: (202) 564-1543; email address: Dougherty.Joseph-J@epa.gov.

SUPPLEMENTARY INFORMATION:

Preface from the Administrator of the Environmental Protection Agency

In this Advanced Notice of Proposed Rulemaking (ANPR), the Environmental Protection Agency (EPA) seeks comment on analyses and policy alternatives regarding greenhouse gas (GHG) effects and regulation under the Clean Air Act. In particular, EPA seeks comment on the document entitled “Advanced Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions under the Clean Air Act” and

observations and issues raised by other federal agencies. This notice responds to the U.S. Supreme Court's decision in Massachusetts v. EPA and numerous petitions related to the potential regulation of greenhouse gas emissions under the Clean Air Act.

EPA's analyses leading up to this ANPR have increasingly raised questions of such importance that the scope of the agency's task has continued to expand. For instance, it has become clear that if EPA were to regulate greenhouse gas emissions from motor vehicles under the Clean Air Act, then regulation of smaller stationary sources that also emit GHGs – such as apartment buildings, large homes, schools, and hospitals – could also be triggered. One point is clear: the potential regulation of greenhouse gases under any portion of the Clean Air Act could result in an unprecedented expansion of EPA authority that would have a profound effect on virtually every sector of the economy and touch every household in the land.

This ANPR reflects the complexity and magnitude of the question of whether and how greenhouse gases could be effectively controlled under the Clean Air Act. This document summarizes much of EPA's work and lays out concerns raised by other federal agencies during their review of this work. EPA is publishing this notice today because it is impossible to simultaneously address all the agencies' issues and respond to our legal obligations in a timely manner.

I believe the ANPR demonstrates the Clean Air Act, an outdated law originally enacted to control regional pollutants that cause direct health effects, is ill-suited for the task of regulating global greenhouse gases. Based on the analysis to date, pursuing this course of action would inevitably result in a very complicated, time-consuming and, likely, convoluted set of regulations. These rules would largely pre-empt or overlay

existing programs that help control greenhouse gas emissions and would be relatively ineffective at reducing greenhouse gas concentrations given the potentially damaging effect on jobs and the U.S. economy.

Your input is important. I am committed to making the data and models EPA is using to form our policies transparent and available to the public. None of the views or alternatives raised in this notice represents Agency decisions or policy recommendations. It is premature to do so. Rather, I am publishing this ANPR for public comment and review. In so doing, I am requesting comment on the views of other federal agencies that are presented below including important legal questions regarding endangerment. I encourage the public to (1) understand the magnitude and complexity of the Supreme Court's direction in Massachusetts v. EPA and (2) comment on the many questions raised in this notice.