

**EPA – Regulating Greenhouse Gas Emissions Under the Clean Air Act, July 30, 2008 *Federal Register*, pp. 44353- 44520, 40 CFR Chapter I, Advance Notice of Proposed Rule Making** – Solicits public comment on analyses and policy alternatives regarding greenhouse gas (GHG) effects and regulation under the Clean Air Act. In particular, EPA seeks comment on a draft June 17 regulatory proposal. Also, EPA provides copies of preliminary comments from other federal agencies and invites the public to respond to the observations and issues raised in their responses. Comments are due by November 28, 2008. For more information, contact Joe Dougherty at 202-566-1744.

### **Draft Regulation & Initial Request for Comments**

*Excerpts from EPA's June 17 ANPR  
June 30, 2008 Federal Register p. 44396 – 44520*

*No specific standards are provided within the June 17 draft. Rather, EPA provides examples and thoughts on several different regulatory approaches under the CAA and requests more information/feedback from stakeholders.*

General Request for Public Comments EPA does not believe that all aspects of the CAA are well designed for establishing the kind of comprehensive GHG regulatory program that could most efficiently achieve the GHG emissions reductions that may be needed over the next several decades. The CAA was not specifically designed to address GHGs. But, unless and until Congress acts, the existing CAA will be applied in its current form. EPA requests comment on:

- Whether a well-designed legislation for establishing a broad GHG regulatory framework has the potential for achieving greater environmental results at lower costs for many sectors of the economy, with less concern about emissions leakage and more effective, clearer incentives for development of technology, than a control program based on the CAA;
- Whether particular CAA authorities (specifically PSD, NAAQS and HAPS) would allow EPA to develop regulations that address climate change considerations in an effective and appropriate matter;
- The extent to which various CAA provisions could be used to help spur technological development, and on the need for federally conducted or funded research to promote technological development;
- Strategies and technologies for simultaneously achieving reductions in both traditional air pollutants and GHG emissions;
- Information about how differences in pollutant characteristics should inform regulation of these pollutants under the CAA – and the types of effective programs at all levels (local, regional, national and international) that may be feasible to design and implement under existing CAA authorities;
- How different regulatory approaches to GHG control under the CAA could result in environmental impacts to water or land that could require response under the CAA or EPA's other legislative authorities;
- What CAA provisions, if any, would authorize emissions fees to control GHG emissions, and whether there are other approaches that could be taken under the CAA that would approximate a fee;
- The use of emission fee programs under sections of the act – and whether sector-specific programs, or inter-sector programs where emission fees on a CO<sub>2</sub> equivalent basis are harmonized, might be more appropriate as possible regulatory mechanisms under the Act;
- How to balance the different policy and economic considerations involved in selecting potential regulatory approaches under the CAA, and on how the potential enactment of legislation should affect EPA's deliberations on how to use CAA authorities;
- The extent to which CAA authorities could be used to minimize competitiveness concerns and leakage of emissions to other sectors or countries, and which approaches should be preferred;
- How to handle uncertainty in benefits and costs calculations and application, given the quantified and unquantified uncertainties;

- Appropriateness of using US and global values in quantifying the benefits of GHG reductions and the appropriate application of benefits estimates given the state of the art and overall uncertainties;
- EPA estimates of the global and US marginal benefits of GHG emissions reductions that EPA has developed, including the scientific and economic foundations, the methods employed in developing these estimates, the discount rates considered, current and proposed future consideration of uncertainty in the estimates, marginal benefits estimates for non-CO2 GHG emissions reductions, and potential opportunities for improving these estimates;
- Important policy interactions and how to adequately inform economic choices, as well as the broader policy choices, associated with GHG mitigation policies.
- The extent to which an endangerment finding under any section of the CAA would lead EPA to make a similar endangerment finding under another provision.

### Endangerment Finding

Section 202(a) endangerment test requires EPA to answer two distinct questions – (1) whether the air pollution at issue may reasonably be anticipated to endanger public health or welfare, and (2) whether emissions from new motor vehicles cause or contribute to that air pollution. EPA must answer both questions in the affirmative for the Agency to regulate under Section 202 (a) of the Act.

Supreme Court concluded that GHGs are “air pollutants” under the Clean Air Act and therefore directed EPA to determine whether GHG emissions from motor vehicles meet the endangerment test of CAA section 202(a). A positive finding of endangerment would require EPA to then set standards applicable to GHG emissions from motor vehicles under the Act. The positive finding itself would not constitute a regulation requiring actual control of emissions. GHGs would become regulated pollutants under the Act if and when EPA subjects GHGs to control requirements under a CAA provision other than sections 112 and 211(o).

EPA requests feedback on the following:

1. What GHGs might be defined as “air pollutant” and should they be managed individually or as a group?
2. Could or should EPA define GHGs as an “air pollutant” one way under one section of the Act and another way under another section?
3. Would different definitions of “air pollutant” result in both definitions applying to a PSD program, and would that result mean that any flexibilities gained under one definition would be lost with the application of the second?

Based on EPA's initial task of deciding whether GHG emissions from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or explain why scientific uncertainty is so profound that it prevents making a reasoned judgment on such a determination, EPA has requested comments on the following assumptions:

- EPA is considering defining the “air pollution” related to GHGs as the elevated combined current and projected atmospheric concentration of the six GHGs (CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs, PFCs, and SF<sub>6</sub>). One alternative would be to define air pollution as the elevated concentration of an individual GHG; however, in this case, the Administrator may still have to consider the impact of the individual GHG in combination with the impacts caused by elevated concentrations of the other GHGs.
- Water vapor emissions may be an issue for concern when they are emitted by aircraft at high altitudes, where, under certain conditions, they can lead to the formation of condensation trails and subsequently extensive cirrus clouds. The warming effects associated with contrail-induced cirrus cloud cover are regional and temporal in nature. EPA invites input and comment on the scientific and policy issues related to consideration of water vapor's association with aviation contrails in an endangerment analysis.
- CFCs, HCFCs, and halons are being controlled and phased out, not because of their effects on climate change, but because they deplete stratospheric O<sub>3</sub>, which protects against harmful

ultraviolet B (UVB) radiation. EPA's preliminary conclusion is to not include CFCs, HCFCs and halons in the definition of "air pollutant" for purposes of an endangerment finding.

- EPA's preliminary conclusion is that they would not include tropospheric O<sub>3</sub> in the definition of "air pollution" for purposes of an endangerment finding because, as with CFCs, HCFCs and halons, it is already being addressed by regulatory actions that control precursor emissions (NO<sub>x</sub> and volatile organic compounds (VOCs)) from major US sources.
- Black carbon is a subcomponent of particulate matter, which is currently regulated as a NAAQS pollutant under the CAA due to its direct health effects caused by inhalation. However, it has different climate properties compared to long-lived GHGs and major sources of black carbon are already being aggressively reduced through regulatory actions. EPA has, however, received petitions asking the Agency to reduce mobile source categories. EPA seeks comment on how to treat black carbon regarding the definition of "air pollution" in the endangerment comment.
- The fact that GHGs remain in the atmosphere for decades to centuries means that future concentrations are dependent not only on tomorrow's emissions, but also on today's. Should EPA consider both current and projected future elevated concentrations of GHGs, as well as the totality of the observed and projected effects that result from current and projected concentrations? Or should EPA focus on future projected effects in the US because they are larger and of greater concern than current GHG concentrations and observed effects?
- EPA requests comment on how non-regulatory efforts to encourage the voluntary reductions in even small amounts of GHG emissions are relevant to decisions about what level of "contribution" merits mandatory regulations.

#### Mobile Source Controls for GHG Emissions

EPA invites comments on the following specific questions:

1. What are the implications for developing Title II programs in view of the global and long-lived nature of GHGs?
2. What factors should be considered in developing a long term, i.e. 2050, GHG emissions target for the transportation sector?
3. Should the transportation sector make GHG emission reductions proportional to the sector's share of total US GHG emissions or should other approaches be taken to determining the relative contribution of the transportation sector to GHG emission reductions?
4. What are the merits and challenges of different regulatory timeframes such as 5 years, 10-15 years, 30-40 years?
5. Should Title II GHG standards be based on environmental need, current projections of future technology feasibility, and/or current projections of future net social benefits?
6. Could Title II accommodate a mobile source cap-and-trade program and/or could Title II regulations complement a broader cap-and-trade program?
7. Should trading between mobile sources and sources in other sectors be allowed?
8. Is it necessary or would it be helpful to have new legislation to complement Title II (such as legislation to provide incentives for the development and commercialization of low-GHG mobile source technologies)?
9. How best can EPA fulfill its CAA obligations under Title II yet avoid inconsistency with NHTSA's regulatory approach under EPCA?
10. Are there specific limitations of a Title II program that would best be addressed by new legislation?

CAA authorities for regulating GHG emissions from mobile sources include:

- Section 202 (a): New on-road motor vehicles
- Section 213: Non-road vehicles and engines
- Section 231: Aircraft engines
- Section 211: Vehicle fuels and fuel additives
- Title II Permits

## Stationary Source Controls for GHG Emissions

EPA invites comments on the following specific questions:

1. How much flexibility does the CAA section provide for implementing its requirements? For example, can EPA set compliance dates that reflect the global and long-lived nature of GHGs and that allow time for technological advances and new technology deployment?
2. To what extent would the section allow for consideration of the costs and economic impacts of regulating GHGs? For example, would the section provide opportunities for sending a price signal, such as through cap and trade programs (with or without cost containment mechanisms) and emission fees?
3. To what extent can each section account for the international aspects of GHG emissions, atmospheric concentrations, and emission impacts, including ways for potentially addressing international pollutant transport and emission leakage?
4. How does each section address the assessment of available technologies, and to what extent could the section promote or require the advancement of technology?
5. To what extent does the section allow for the ability to prioritize regulation of significant emitting sectors and sources?
6. To what extent could each authority be adapted to GHG regulation without compromising the Act's effectiveness in regulating traditional air pollutants?
7. Are there specific statutory limitations that would best be addressed by new legislation?

EPA also requests comments on the following specific questions regarding potential regulatory approaches under Section 111 of CAA:

8. What are the overall advantages and disadvantages of the regulatory approaches in light of the policy design considerations in section III.F.1? Please describe in detail any approaches that you think should be considered.
9. What are the industry-specific advantages and disadvantages of NSPS regulatory approaches? What data are available, or would need to be collected, to support the development of performance standards, either by process, subcategory or for the facility? Should the standards be different for new and existing sources, either in terms of the systems for emission reductions on which they should be based and/or on the regulatory structure and implementing mechanisms for such standards? To what extent, if any, should the standards be technology-forcing for existing sources? Should the standards require additional reductions over time? To what extent would such reductions be consistent with the authority and purpose of Section 111, and how should they be designed and carried out to ensure consistency?

CAA authorities for regulating GHG emissions from stationary sources include:

- Section 108: Placement on NAAQS List of Pollutants
- Section 109: Setting of new NAAQS Standards
- Section 107: Attainment Area Designations under NAAQS
- Section 110: Federal and State Implementation Plans
- Section 111(b): New Source Performance Standards
- Section 111(d): Emissions Guidelines for Existing Sources
- Section 112: NESHAP Standards
- NSR/PSD Program
- Title V Permit Program

### **Federal Agency Commentary Highlights**

*Excerpts from Agency Commentary*

*July 30, 2008 Federal Register p.44356 – 44396*

#### **OMB – Office of Management & Budget Response to EPA**

- The issues raised during interagency review are so significant that we have been unable to reach interagency consensus in a timely way, and as a result, the June 17 draft cannot be

considered Administration policy or representative of the views of the Administration. However, we have determined in this case that consensus is not necessary in order for EPA to seek public comment on the wide-ranging issues raised by the draft regarding the potential regulation of greenhouse gases under the Clean Air Act. ...waving the requirement for Executive Order 12866 review due to the extraordinary circumstances presented here...any future notice would be subject to interagency review under Executive Orders 12866 and 13342.

- Interagency reviewers concluded upon reading the draft that trying to address greenhouse gas emissions through the existing provisions of the CAA will not only harm the U.S. economy, but will fail to provide an effective response to the global challenge of climate change.
- EPA should seek public comment on the issues raised by the other agencies and should address these issues before it considers, and before OMB reviews, a notice of proposed rulemaking under the CAA.
- The draft seeks out a hypothetical roadmap outlining ways in which different provisions of the CAA could be applied to address greenhouse gas emissions. Following such a regulatory roadmap could result in the piecemeal application of command-and-control regulation... the draft offers several untested legal propositions for “flexible” interpretations of the CAA...Even if this regulatory approach legally could support economic incentives, it would likely be narrowly focused to cover a limited set of activities, and would not successfully engage the ingenuity and creativity of American citizens so that future generations can continue to enjoy both prosperity and environmental quality.

#### **DOT/DOE/DOC/USDA – Joint Cover Letter to OMB**

- The EPA staff has prepared a draft suggesting the CAA can be both workable and effective for addressing global climate change by regulating GHG emissions from stationary and mobile sources of virtually every kind. Our agencies have serious concerns with this suggestion because it does not fairly recognize the enormous – and, we believe, insurmountable – burdens, difficulties, and costs, and likely limited benefits, of using the CAA to regulate GHG emissions.
- CAA is fundamentally ill-suited to the effective regulation of GHG emissions. Controlling GHG emissions in the US will reduce atmospheric concentrations of those gases only if our emissions reductions are not simply replaced with emissions increases elsewhere in the world. The draft seems to take the approach of seeking emissions reductions with no precise idea of exactly what goal is being pursued or what GHG concentration-level objective is to be achieved.
- Applying CAA regulations to US businesses in order to address global climate change – outside of any international framework that brings together all of the world’s major economies, both developed and developing – would simply export economic activity and emissions to less-regulated countries and might not generate any net reduction in worldwide GHG emissions. The draft...builds a regime that would impose enormous costs on US consumers, workers, and businesses without addressing the fundamental shift in emissions growth from the developed world to the developing world.
- The draft suggests that regulating GHGs under the CAA would be workable. The draft offers a number of legal constructs to support its position, but there is no certainty of how those theories will work in actuality, or whether they would be upheld by the courts. Such legal uncertainty simply emphasizes the risk to the Nation’s energy, economic, and environmental security of seeking to shoehorn a GHG regulatory program into the CAA.
- The suggested permitting regimes would be extraordinarily intrusive and burdensome. The draft recognizes that regulations of GHG emissions under the CAA would likely extend permitting requirements and emissions controls to many sources not previously subject to CAA regulation, such as large buildings heated by natural gas. This could lead to EPA exercising de facto zoning authority through control over thousands of what formerly were local or private decisions, impacting the construction of schools, hospitals, and commercial and residential development.

- Although the draft sets forth data and analysis that could be useful in the overall debate about GHGs, our agencies disagree with many of the assumptions in the draft about the costs of controlling GHGs, the technologies currently available and potentially available in the future, the timeline for the development of some of those technologies, and the potential harm from and benefits of controlling GHG emissions from specific sources.
- The draft suggests the possibility of an overlapping regulatory mandate using the CAA, potentially creating inconsistent regulatory mandates and uncertainty for US industries and consumers, with minimal if any improvements in US greenhouse gas emissions.

#### DOT – Department of Transportation Comments

- The draft suggests an array of specific regulatory constructs in the transportation sector under the CAA without the requisite determinations that greenhouse gas emissions endanger public health or welfare and that regulation is feasible and appropriate.
- It is an illusion to believe that a national consensus on climate policy can be forged via a CAA rulemaking. Guided by the provisions of a statute conceived for entirely different purposes – and unconstrained by any calculation of the costs of the specific regulatory approaches it contemplates – such a rulemaking is unlikely to produce that consensus.
- As visualized in the June 17 draft, the US economy would be subjected to a complex set of new regulations administered by a handful of people with little meaningful public debate and no ability to consider benefits, costs, risk tradeoffs and feasibility.
- If implemented, the actions that the draft contemplates would significantly increase energy and transportation costs for the American people and US industry with no assurance that the regulations would materially affect global greenhouse gas atmospheric concentrations or emissions.
- The draft fails to identify the market failures or environmental externalities in the transportation sector that regulation might correct, and, in turn, what sort of regulation would be best tailored to correcting a specific situation.
- The draft conveys the incorrect impression that the summary numbers such as fuel savings, emission reductions, and economic benefits that are presented in the draft are comparable with those presented in National Highway Transportation Security Administration's (NHTSA) April 22 NPRM, when in fact the draft's numbers are calculated differently, and in many cases, using outdated information.
- The draft fails to ask whether additional regulation of light duty vehicles is necessary or desirable, nor gives any serious consideration how CAA and EISA authorities might be reconciled.
- The detailed analysis of a light duty vehicle rule in the draft covers the same territory as does NHTSA's current rulemaking – and is completely unnecessary for the purposes of an endangerment finding or for seeing comment on the best method of regulating mobile source emissions.
- The NAAQS that the draft would establish – and the development of the implementation plans that would follow – could seriously undermine the efforts to modernize the transportation infrastructure. These procedures are not capable of assessing and reducing impacts of global pollutants without substantial disruption and waste.
- A poorly designed performance standard that pushes operators into smaller vehicles may result in greater and not fewer of the emissions the draft intends to reduce. Because freight-hauling performance is maximized by matching the vehicle to the load, one large, high horsepower truck will deliver a large/heavy load at a lower total and fuel cost than the same load split into two smaller, low horsepower vehicles.
- The text of the draft suggests that EPA may consider locomotive provisions to include hybrid diesel/electric locomotives and the application of dynamic braking... ***A sensible public policy dictates caution against imposing unrealistic standards or mandating technology that is not cost-effective, not reliable, or not completely developed.***
- The draft does not provide adequate information regarding aviation emissions related to several important areas: (1) the overwhelming market pressures on commercial airlines to reduce fuel consumption and therefore carbon dioxide emissions and the general trends in aviation emissions growth; (2) expected technology and operational improvements being

developed under the interagency Next Generation Air Transportation System (NexGen) program; (3) the work and role of the International Civil Aviation Organization in aviation environmental matters; (4) limits on EPA's ability to impose operational controls on aviation emissions and (5) the scientific uncertainty regarding greenhouse gas emissions from aircraft.

- Proposals for changes to airspace or air traffic operational procedures usurp the FAA's responsibility as the Nation's aviation safety regulator and air traffic manager. It is inappropriate for the EPA to suggest operational controls without consideration of the safety implications that the FAA is legally required to address.

#### **DOE – Department of Energy Comments**

- DOE believes that once the implications of the approach offered in the draft are fully explained and understood, it will make one thing clear about controlling GHG emissions and addressing global climate change – unilaterally proceeding with an extraordinarily burdensome and costly regulatory program under the CAA is not the right way to go.
- The draft lacks the comprehensive and balanced discussion of the impacts, costs, and possible lack of effectiveness were the US, through EPA, to use the CAA to comprehensively but unilaterally regulate GHG emissions in an effort to address global climate change...The CAA is based on states and local areas controlling emissions of air pollutants in order to improve US air quality...The draft has the overall effect of suggesting that under the CAA, as it exists today, it would be possible to develop a regulatory scheme of trading programs and mechanisms to regulate GHG emissions and thus effectively address global climate change...However, such programs have not yet been fully conceived, in some cases rely on untested legal theories or applications of CAA, would involve unpredictable but likely enormous costs, would be invasive into virtually all aspects of the lives of Americans, and yet would yield benefits that are highly uncertain, are dependent on the actions of other countries, and would be realized, if at all, only over a long time horizon.
- CAA regulation of GHG emissions from stationary sources would significantly increase costs associated with the operation of power plants and industrial sources, as well as increase costs associated with direct energy use by sources such as schools, hospitals, apartment buildings, and residential homes.
- The burdens will be enormous, they will fall on many entities not previously subject to direct regulation under the Act, and all of this will happen even though it is not clear what precise level of GHG emissions reduction or atmospheric GHG concentration level is being pursued, or even if that were decided, whether the CAA is a workable tool for achieving it.
- At least three major difficulties would be presented with respect to the issuance by EPA of a NAAQS for one or more greenhouse gases: (1) the determination of what GHG concentration level is requisite to protect public health and welfare; (2) the unique nature of GHGs as pollutants dispersed from sources throughout the world and that have long atmospheric lifetimes; (3) GHG concentrations in the ambient air are virtually the same throughout the world meaning that they are not higher near major emissions sources than in isolated areas with no industry or major anthropogenic sources of GHG emissions.
- There is little or nothing that a single state or region can do that will appreciably alter the atmospheric GHG concentration level in that particular area. A GHG NAAQS standard would put the entire US in either attainment or non-attainment, and it would be virtually impossible for an individual state to control or reduce GHG concentrations in its area and, thus, to make significant strides towards remaining in or reaching attainment with the NAAQS.
- DOE believes there is legal uncertainty about EPA's authority to utilize market systems, which makes a GHG market-oriented program under the NSPS program uncertain.
- EPA's regulation of small stationary sources (which account for a third of all stationary source emissions) would require a burdensome and intrusive regulatory mechanism unlike any seen before under CAA. Given the volume of greenhouse gases that are emitted from small stationary sources in the aggregate, it is uncertain whether EPA could conclude that small stationary sources do not cause "or contribute significantly" to air pollution that endangers the public health or welfare.

- DOE believes it would be inappropriate for greenhouse gases to be listed as HAPs given, among other things, EPA's acknowledgement that ambient GHG concentrations present no health risks.
- It is entirely unclear at this point what sort of MACT standard would be placed on which sources for purposes of controlling GHG emissions, what such controls would cost, and whether such controls would be effective. Complying with such standards would place a significant burden on states and localities, manufacturing and industrial facilities, businesses, power plants, and potentially thousands of other sources throughout the US. And, the 3-4 year compliance timeline would leave little to no time for emission capture and reduction technologies to emerge, develop, and become cost-effective.
- The effect of regulating emissions of GHGs from stationary sources under the CAA could force a drastic shift in the US power sector.
- The Department is concerned that the draft does not properly acknowledge collateral effects of using CAA regulation to address global climate change, particularly in the absence of a regime that actually will effectively address global climate change by addressing global GHG emissions. The US can only effectively address GHG emissions and global climate change in coordination with other countries, and by addressing how to regulate GHG emissions while considering what the effect of doing so will be on the Nation's energy and economic security.
- The Department believes that technological innovation and advancement is the key to unlocking the future of abundant clean energy and lower GHG emissions. This innovation and advancement – through government funding, private investment, and public policies that promote both of these – should be the cornerstone of any plan to combat global climate change.

#### **DOC – Department of Commerce Comments**

- DOC's fundamental concern with the draft's approach to using the CAA to regulate GHGs is that it would impose significant costs on US workers, consumers, and producers and harm US competitiveness without necessarily producing meaningful reductions in global GHG emissions.
- Applying tariffs to imports from countries without carbon regulations would have a number of significant repercussions. Unilateral US carbon tariffs could spark retaliatory measures against US exporters, the brunt of which would fall on US workers, consumers, and businesses. The energy intensive industries, such as steel and cement, could suffer up to a 30 percent loss. Moreover, carbon tariffs would actively undermine existing US trade policy. The US government has consistently advocated for reducing tariffs, non-tariff barriers, and export subsidies. Introducing new tariffs or export subsidies for carbon or energy content would undermine those efforts with respect to clean energy technologies specifically and US goods and services more broadly, as well as invite other countries to expand their use of tariffs and subsidies to offset costs created by domestic regulations.
- The proper way to address GHG regulation is through an international agreement that includes emission reduction commitments from all the major emitting economies, not by unilaterally erecting higher barriers to trade.
- The inability, at this time, to identify either a realistic emissions target or the technical feasibility of achieving various levels of reduction is one of the major flaws of using the draft to assess policy changes of this magnitude. ...using the CAA to regulate GHGs is significantly more ambitious in scope than anything previously attempted under the CAA...climate policies of this magnitude are best addressed through legislative debate and scrutiny.

#### **USDA – Department of Agriculture Comments**

- We believe the input costs and regulatory burden would increase significantly, driving up the price of food and driving down the domestic supply. Additionally, the ANPR does not sufficiently address the promise of carbon capture and sequestration, and how a CAA regulatory framework could address these issues.

- Depending on the extent to which the CAA puts further pressure on energy prices, input costs for indispensable items such as fuel, feed, fertilizer, manufactured products, and electricity will continue to rise.
- NAAQS, HAP, NSPS were neither designed for, nor are they suitable to, regulation of greenhouse gases from agricultural sources. Agricultural emissions of greenhouse gases are diffuse and most often distributed across large open areas. These emissions are not easily calculated or controlled. Moreover, many of the emissions are the result of natural biological processes that are as old as agriculture itself. The only means of controlling such emissions would be through limiting production, which would result in decreased food supply and radical changes in human diets.
- Given the nature of many agricultural source emissions, reasonably available control measures (RACM) and reasonably available control technologies (RACT) may not exist or may be cost prohibitive.
- Should EPA choose to regulate agriculture under NSPS, control requirements would be established at the national level using a “one-size-fits-all” approach. Differences in farming practices make it difficult to comply with this approach, as variability exists between types of operations and between similar operations located in different regions of the US.
- The cost of controls used by the best-performing sources would increase the operating expenses for all farms regardless of size.
- Any regulatory program should avoid needless duplication and conflict with already existing efforts. The recently enacted Food, Conservation and Energy Act of 2008 (Farm Bill) requires the Secretary of Agriculture to establish technical guidelines to create a registry of environmental services benefits from conservation and land management activities, including carbon capture and sequestration.

**CEA/OST – Council of Economic Advisers/ Office of Science & Technology Joint Letter**

- In absence of much more accurate forecasting for the array of CO<sub>2</sub> emitting activities, the regulatory process will be continually out of step with reality unless it can be designed to adjust itself on realistic time scales.
- Anthropogenically driven climate impacts are in nearly every case indistinguishable from naturally occurring phenomena. Nor is it currently possible to quantify impacts event to a *less exact* standard that is needed to regulate GHGs through the CAA.
- Activities currently proposed for regulation will have no impact on public welfare for decades. Consequently, all approaches to the assessment of impacts necessarily involve forecasts. Within its continually expanding limits, science can estimate the implications of social scenarios for anthropogenic global warming, but it has little power to assess the validity of the scenarios themselves.
- Given the long-term nature and global scale of climate change and the nature of the uncertainties inherent in its associated impacts, the machinery of the Acts’ regulatory frameworks are clearly not adequate to the task.
- The regulations considered by the authors of the ANPR are a cumbersome set of rules and restrictions that are in some cases excessive, inadequate, redundant, inordinately burdensome to the economy, and almost certain to fail to produce the desired climate results. Because of specific limitations in the law, the CAA does not permit the EPA to attain economic efficiency while reducing GHG emissions, even in the narrow context of emissions by the US. It is even less effective when viewed in the global context appropriate for greenhouse gases.
- Acting in a globally uncoordinated fashion will put the US at a competitive disadvantage, will induce economic distortions and may actually be counter productive in reducing GHGs.

**CEQ – Council on Environmental Quality**

- Not able to support or otherwise endorse the draft document in present form.
- The draft does not provide a full and meaningful discussion of the broader policy and economic context in which it is considering, in the event of an endangerment finding, triggering the prospect of essentially automatic and immediate regulation over a vast range of

- community and business activity and an equally vast range of potential discretionary regulations with respect to the same and additional activities.
- The draft myopically focuses on the CAA and ignores or understates major intended and unintended consequences that would flow from misapplying decades-old regulatory tools applicable to local and regional pollution that were never designed to address greenhouse gas emissions and the global nature of these emissions.
  - Provides little or no discussion of the extent to which new EPA regulations would duplicate, contradict, or effectively countermand the numerous mandates, incentives, and public private partnerships that are already underway and producing real results in addressing greenhouse gas emissions. This concern is particularly acute to the extent EPA action would effectively override the deliberate, bi-partisan decisions of elected federal and state legislatures on certain policies, as well as overriding some of EPA's own successful programs.
  - The draft downplays the significance of the fact that applying regulations designed for relatively concentrated pollutants to relatively un-concentrated and voluminous emissions such as carbon dioxide will subject tens or even hundreds of thousands of community and business enterprises to CAA regulations for the first time. The administrative implications and costs of this alone would be daunting for federal budgets and staff.

#### **SBA – Small Business Advocate**

- It is difficult to overemphasize how potentially disruptive and burdensome such a new regulatory regime would be to small entities. In our view, those costs would likely be imposed on large numbers of small entities with little corresponding environmental benefit in terms of reduced GHG emissions.
- The ANPR demonstrates that the CAA regulatory framework is poorly suited as a mechanism to control GHG emissions...EPA has likely greatly underestimated the large number of sources that would be required to obtain PSD/NSR permits if GHGs were included in the program...Requiring small firms that would otherwise not be subject to Title V to obtain Title V permits on the basis of GHG emissions would not be worth the cost to companies or the heavy additional load placed on permitting authorities' resources.
- GHGs are fundamentally different than any of the current NAAQS criteria pollutants. Small entities would become subject to new "one-size-fits-all" GHG requirements, regardless of local conditions or their actual emissions of GHGs. Establishing a GHG NAAQS would set in motion a number of statutory control measures that would be costly, inefficient, and ineffective. Small entities could have to contend with new barriers to construction and expansion, new restrictions on operating cars and trucks, and the potential for having to retrofit their existing buildings with GHG controls or to purchase equivalent credits.