EPA's Advance Notice of Proposed Rulemaking on CO_2
Condensed Fact Sheet

What is an ANPR?

An Advance Notice of Proposed Rulemaking (ANPR) is a preliminary notice, published in the Federal Register, announcing that an agency is considering regulatory action. Agencies typically issue ANPRs in order to gather more information prior to making a decision whether to begin a formal rulemaking. The public is free to provide comments in response to any and all issues requested by the agency in the ANPR.

Why is EPA issuing an ANPR for Greenhouse Gases?

In March 2007, EPA was ordered by the U.S. Supreme Court, in the case *Massachusetts v. EPA*, to respond to a relatively narrow issue: whether, under Section 202(a)(1) of the Clean Air Act (CAA), CO_2 and other greenhouse gas emissions from a class or classes of new motor vehicles or new motor vehicle engines cause or contribute to air pollution which may be reasonably anticipated to endanger public health or welfare.

EPA originally planned to incorporate its endangerment decision into a rule implementing President Bush's "Twenty in Ten" energy plan that would set a 35-billion-gallon renewable fuels standard and increased vehicle fuel economy standards. However, on December 19, 2007, Congress passed and the president signed into law the Energy Independence and Security Act of 2007 (EISA). The EISA contained, among other things, a 36-billion-gallon renewable fuels mandate and stricter fuel economy standards for cars and light trucks. In light of this new law, EPA postponed its endangerment decision, and its response to *Massachusetts*, until 2008.

On July 30, 2008, EPA published in the *Federal Register* the ANPR, in response to the Supreme Court's order in *Massachusetts*.

What does the ANPR say?

EPA's original intent for the ANPR was a brief request for comments not only on emissions from new motor vehicles but from all sources. However, thanks to the heavy-handed work of various career staffers, the ANPR became a thousand-page roadmap (including appendices and technical documents) setting forth EPA's theories as to how it can regulate all sources of greenhouse gas emissions via the CAA. The bulk of the ANPR is a draft paper prepared by EPA staff outlining all of the programs in the CAA they believe they can apply to greenhouse gases by virtue of EPA's existing authority. EPA requests comments on virtually every facet of these programs and their application.

The ANPR itself consists of two main parts:

1. Memoranda from eight federal agencies and executive offices,[1] as well as a preamble by the Administrator of EPA himself, expressing strong disapproval of the use of the Clean Air Act to regulate greenhouse gas emissions; and

2. A draft paper prepared by EPA career staff containing:
    a. A discussion of the endangerment issue and the scientific basis for making such a finding;
    b. A discussion of the various CAA sections and programs EPA would use to regulate mobile sources; and
    c. A discussion of the various CAA sections and programs EPA would use to regulate stationary sources.

For mobile sources, EPA sets forth a myriad of potential types of regulation, such as mandatory imposition of new technologies, mandatory obsolescence of existing technologies, and enforcement. EPA also lists the specific *types* of actions it could take by sector, and its analysis is not limited to equipment but also to operation. For instance, EPA believes it could reduce emissions in the aviation sector by forcing carriers to: (1) redesign the weight and aerodynamics of their planes; (2) redesign the engines of their planes; (3) fly slower; (4) change their routes; (5) buy different fuels; and (6) alter their taxiing, air traffic controls and management. No sector is left unharmed; for instance, EPA suggests it could force makers of lawn mowers and recreational vehicles to stop using two-stroke engines and instead convert to four-stroke engines.

For stationary sources, EPA considers three specific pathways: (1) setting National Ambient Air Quality Standards (NAAQS); (2) New Source Performance Standards (NSPS) for specific industries; (3) and regulation as Hazardous Air Pollutants (HAP). All of these methods will result in significant pain for consumers. NAAQS may be the most unworkable, particularly because air quality standards are typically measured locally and mitigation strategies for criteria pollutants are incorporated into individual state implementation plans. However, for greenhouse gases, EPA admits that it would likely have to assess air quality assessment on a national scale. Therefore, the entire U.S. would either be designated attainment or non-attainment depending solely on where the Administrator sets the NAAQS. Regulation of greenhouse gases as HAPs will force strict technological standards on anyone emitting more than 25 tons per year of CO_2; even EPA admits that "if GHGs were listed as HAPs, EPA would be required to regulate a very large number of new and existing stationary sources, including smaller sources than if alternative CAA authorities were used to regulate GHG."

Finally, if EPA finds endangerment and greenhouse gases are regulated by ***any*** provision of the CAA, Prevention of Significant Deterioration (PSD) permitting authority will be triggered for any source emitting more than 250 tons per year of CO_2. This potentially exposes more than a million medium and large buildings in the United States to costly,

[1] These are: Office of Management and Budget; Department of Agriculture; Department of Commerce; Department of Transportation; Department of Energy; Council of Economic Advisers; Office of Science and Technology Policy; and Council on Economic Quality.

onerous permitting requirements anytime construction is undertaken that will result in CO_2 emissions over the 250-ton-per-year threshold. Covered buildings must then determine whether they must install Best Available Control Technologies to control emissions. For a nation desperately trying to pull itself out of an economic rut, the PSD permit process could literally stop construction as we know it.

Why you should care

The ANPR is not a final rule, or even a proposed rule. At the close of the ANPR comment period, none of its contents will become binding law. However, its contents—not to mention the political "message" sent by its drafters—raise a lot of red flags for American businesses. Manufacturers of equipment that emits greenhouse gases now face a very real risk that EPA will attempt to force redesigns to their products. Moreover, long-range R&D planning for companies in many sectors will now have to be reevaluated. Profits will hinge not on businesses' adaptability to market forces, but rather compliance with environmental laws.

Just as importantly, EPA staff is clearly trying to force Congress to legislate, and is using the ANPR as a form of political blackmail: give us climate legislation, or else we will give you the programs in the ANPR. EPA career staff—in other words, the employees who will likely stay on at EPA in the new administration—clearly believe *Massachusetts v. EPA* empowers them to regulate all sources of greenhouse gas emissions, not just those from new motor vehicles. EPA staff has pledged to continue down this path of Clean Air Act regulation of greenhouse gases unless and until Congress steps in.

The U.S. Chamber urges all consumers to communicate to EPA through the public comment process the message that the Clean Air Act should not be used to regulate greenhouse gases. Because EPA has pledged to continue down this path, Congress must step in and enact legislation to prohibit EPA from regulating greenhouse gases under the Clean Air Act.