

Compliance: Vehicle Emissions May Prove Costly

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EPA proposes to find that GHGs endanger public health.

A proposed rule regarding greenhouse gases (GHG) impact on public health under Clean Air Act (CAA) Section 202(a) was issued April 24, by the U.S. Environmental Protection Agency (EPA). This is a significant proposal that could pave the way for more restrictions on GHG emissions from new motor vehicles. Any chemical producer, formulator, distributor, or other stakeholder could be subject to GHG emission limitations that, depending upon the legislative/regulatory vehicle, could incur costs for compliance.

What's In The Air?

In the U.S. Supreme Court's April 2, 2007, decision in *Massachusetts v. EPA*, the Court found that GHGs are air pollutants under CAA Section 202. The Court held that EPA must determine whether GHG emissions from new motor vehicles cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision. In making these decisions, EPA is required to follow the language of CAA Section 202(a).

Under CAA Section 202(a), the EPA Administrator Lisa Jackson must exercise her judgment and make two separate determinations: whether air pollution may reasonably be anticipated to endanger public health or welfare; and whether emissions of any air pollutant from new motor vehicles or engines cause or contribute to this air pollution. In the proposed rule, EPA describes in detail its interpretation of the methodology the administrator must use for the endangerment finding.

The science "compellingly" supports a positive endangerment finding for both public health and welfare, according to EPA. Jackson reportedly relied upon the major findings and conclusions from recent assessments of the U.S. Climate Change Science Program and the Intergovernmental Panel on Climate Change. EPA would find that atmospheric concentrations of GHGs endanger public health and welfare within the meaning of CAA Section 202(a). EPA noted that the current and projected concentrations of the mix of six GHGs — carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride — in the atmosphere threaten the public health and welfare of current and future generations. EPA refers to this as the "endangerment finding." EPA also determined that the combined emissions of carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons from new motor vehicles and motor vehicle engines contribute to the atmospheric concentrations of these GHGs and hence to the threat of climate change. EPA refers to this as the cause or "contribute finding."

In addition, the administrator has proposed to find that emissions of four of these GHGs (carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons) from new motor vehicles will cause or

contribute to the atmospheric concentrations responsible for such endangerment. The Administrator has proposed to make the cause or contribute determination for these four pollutants both collectively and individually.

EPA has elected to use the rulemaking procedures in CAA Section 307(d) for this rulemaking. Consequently, only objections to the proposed determinations that are “raised with reasonable specificity during the period for public comment” may be cited during any judicial review.

Still Time to Weigh In

The proposed rule “would not itself impose any requirements on industry or other entities,” notes EPA. After making final endangerment and cause or contribute findings, EPA will adopt any restrictions on emissions of GHGs by new motor vehicles as part of a separate rulemaking. In its press release, EPA states: “Before taking any steps to reduce greenhouse gases under the Clean Air Act, EPA would conduct an appropriate process and consider stakeholder input. Notwithstanding this required regulatory process, both President Barack Obama and Jackson have repeatedly indicated their preference for comprehensive legislation to address this issue and create the framework for a clean energy economy.” EPA scheduled a series of public hearings around the country on the proposed findings. More information about the public hearings is available at <http://www.epa.gov/climatechange/endangerment.html>. Comments on the proposed rule are due by June 23.

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