



EPA Moves Toward Regulation of Greenhouse Gas Emissions

Earlier today, EPA issued proposed findings that greenhouse gases not only pose an imminent and sustained threat to the public health and welfare but also contribute to climate change. In so doing, EPA has laid the groundwork for potential regulation of greenhouse gas emissions.

Today's announcement follows closely on the heels of EPA's March 10th press release regarding a proposed regulation that would mandate the reporting of greenhouse gas emissions produced by major sources. According to EPA, the proposed regulation, which targets "suppliers of fossil fuel and industrial chemicals, manufacturers of motor vehicles and engines, as well as large direct emitters of greenhouse gases with emission equal to or greater than a threshold of 25,000 metric tons per year" would impact

"[a]pproximately 13,000 facilities, accounting for about 85 percent to 90 percent of greenhouse gases emitted in the United States" Unlike EPA's March 10th proposed regulation, which, if issued, would unquestionably inconvenience the significant number of businesses subject to its new reporting requirements, the proposed findings announced by EPA today could ultimately form the backbone of far more stringent regulations whose requirements would not only saddle businesses with a heavier administrative burden but would also impose substantial costs in the form of compliance and decreased production.

The impetus for today's proposed findings dates back slightly more than two years to the U.S. Supreme Court decision in *Massachusetts v. EPA*, a case in which Massachusetts, joined by eleven other states and several local governments and private organizations, challenged EPA's refusal to regulate greenhouse gas emissions from motor vehicles. Although the Court's 5-4 decision on April 4, 2007, concluded that EPA had the *authority* to regulate greenhouse gases, the Court did not go so far as to *require* EPA to regulate greenhouse gas emissions from motor vehicles; rather, it merely required EPA to assess the need for regulation and "ground its reasons for action or inaction in the [Clean Air Act]."

EPA's decision to issue both a proposed endangerment finding (that greenhouse gases pose a threat to the public health and

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welfare) and a proposed cause or contribute finding (that greenhouses gases contribute to climate change) may exceed the Court's mandate in *Massachusetts v. EPA*, but it aligns closely with the Obama Administration's relentless push for a swift and substantial reduction in greenhouse gas emissions, and it will undoubtedly place even greater pressure on congressional leaders to pass climate change legislation in the coming weeks.

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