



Statement of the U.S. Chamber of Commerce

ON: REGULATION OF GREENHOUSE GASES UNDER
THE CLEAN AIR ACT

TO: UNITED STATES SENATE COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS

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ENVIRONMENT, TECHNOLOGY AND
REGULATORY AFFAIRS

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The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

**BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
OF THE UNITED STATES SENATE**

“REGULATING GREENHOUSE GASES UNDER THE CLEAN AIR ACT”

**Testimony of William L. Kovacs
Vice President, Environment, Technology and Regulatory Affairs
U.S. Chamber of Commerce**

September 23, 2008

Good morning, Chairman Boxer, Ranking Member Inhofe, and members of the Committee on Environment and Public Works. My name is William L. Kovacs and I am Vice President for Environment, Technology and Regulatory Affairs for the U.S. Chamber of Commerce. The Chamber is the world’s largest business federation, representing more than three million businesses and organizations of every size, sector, and region. On behalf of the Chamber and its members, I thank you for the opportunity to testify here today.

You have asked me to come before the Committee today to discuss the impact regulation of greenhouse gas emissions under the Clean Air Act (CAA) would have on business and the economy. The Chamber thanks the Committee for examining this issue as part of its broader debate on global climate change policy options. As my testimony today will explain, the CAA is not the appropriate vehicle for regulating greenhouse gases.

In order to avoid a cascade of unintended regulatory consequences, Congress must pass legislation preventing the Environmental Protection Agency (EPA) from using the CAA to address greenhouse gas emissions. Congress has spent such a significant amount of time over the last several years debating climate policy that it certainly appears Congress believes it is the appropriate institution to make those policy determinations. As EPA’s Advance Notice of Proposed Rulemaking (ANPR) demonstrates, there are simply too many complex policy considerations to be handled by an agency created by Executive Order several decades ago.

I. The Chamber Supports the Political Decision to Issue an ANPR.

Much has been made of EPA’s decision to issue the ANPR in lieu of an endangerment finding and proposed rule, and of its decision to issue the ANPR as drafted in lieu of a more “traditional” ANPR that seeks comment on a few general, open-ended questions. It will not do us any good to argue about what could have been. What is important now is that Congress decide if it is the appropriate institution to determine climate policy, and whether it is willing to allow EPA to make that decision through a rulemaking procedure in response to a Supreme Court decision.

Content aside, the Chamber believes the political decision to issue an ANPR was a good public policy decision, because it allows an open debate as to how the CAA will operate in the context of greenhouse gases. Undertaking environmental regulations without a full understanding of the legal, economic and policy decisions can only lead to disaster, and for this reason the ANPR approach of gathering facts and information is traditionally a good one. The record developed in response to the ANPR will, conceivably, inform Congress and agency decision makers as to what they can expect if EPA regulates greenhouse gases under the CAA.

EPA is acting under a directive from the U.S. Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007). In *Massachusetts*, the Court made two key findings: First, greenhouse gases fall within the capacious definition of “air pollutant” found in CAA section 301, thereby giving EPA authority to regulate greenhouse gases under the CAA; and second, EPA must determine either:

- (i) that GHGs cause or contribute to air pollution which may be reasonably anticipated to endanger public health or welfare, as required by section 202(a)(1);
- (ii) that greenhouse gases do not contribute to climate change; or
- (iii) provide a reasonable explanation as to why EPA cannot or will not exercise its discretion to make an endangerment finding.

To date, EPA has not made a formal endangerment finding, nor is it under a firm deadline to do so. The Court stated in *Massachusetts* that “EPA no doubt has significant latitude as to the manner, timing, content, and coordination of its regulations with those of other agencies.” *Id.* at 1462. The matter is therefore before EPA on remand of *Massachusetts* and in the context of a number of regulatory petitions and other requests made to EPA to regulate greenhouse gases. Because EPA has such latitude as to the matter, timing and content of its response to *Massachusetts*, the ANPR is a good vehicle for EPA to determine whether and how to make a final decision on the ultimate issue left open by the Court: whether greenhouse gas emissions from any class or classes of new motor vehicles or new motor vehicle engines endanger public health or welfare, or why EPA cannot or will not exercise its discretion to make an endangerment finding.

Moreover, it is clear from the ANPR that EPA itself does not know how to apply the CAA to greenhouse gases. The ANPR contains roughly 400 open-ended legal and policy questions, ranging from the general (the best available science for an endangerment finding) to the specific (application of section 179B to attainment plan requirements). It is unreasonable to think that EPA would have had correct answers to even a fraction of these questions that would have withstood judicial review had it just jumped into the regulatory briar patch by finding endangerment. A formal CAA greenhouse gas rule of the magnitude covered by the ANPR could require hundreds of rulemakings and could ultimately result in a decade or more of litigation. There are simply too many decisions to be made, and proceeding with a formal rule prior to answering the questions raised in the ANPR would have been bad public policy. There is

nothing wrong with taking 120 days (at least) to examine the many issues involved in applying the rigid requirements of the CAA to greenhouse gas emissions.

II. The Chamber Believes the Clean Air Act Regulatory Structures Set Forth by EPA in the ANPR, If Implemented, Would Cause Regulatory Chaos.

Although the Chamber agrees with EPA's initial decision to issue an ANPR, the Chamber has major concerns with the actual content of the ANPR as drafted by EPA staff. Put simply, the Clean Air Act is not an appropriate vehicle to regulate greenhouse gases. The ANPR, both intentionally and unintentionally, makes this fact abundantly clear.

A. EPA vastly oversteps its authority and communicates a belief that it can control the economy through CAA regulation.

The scope of the endangerment finding required by *Massachusetts* is relatively limited, and pertains only to the precise issue of whether greenhouse gas emissions from any class or classes of new motor vehicles or new motor vehicle engines cause, in EPA's judgment, endangerment. However, as described further in part B of this section, an endangerment finding limited to motor vehicles could lead to an inevitable regulatory cascade, triggering obligations to promulgate National Ambient Air Quality Standards (NAAQS), New Source Performance Standards (NSPS) and other requirements such as Prevention of Significant Deterioration (PSD) and Title V operating permits. Finding endangerment for vehicles, therefore, could easily lead to vast regulation of buildings and other stationary sources. Perhaps for this reason, EPA went far beyond motor vehicle regulations in the ANPR and set forth regulations for *all* sources of greenhouse gas emissions—in other words, the entire economy.

By “all sources of greenhouse gas emissions,” EPA means everything: cars, trucks, planes, trains, boats, office buildings, refineries, manufacturing plants, tractors, lawnmowers, motorcycles, schools, hospitals, data centers, breweries, bakeries, farms, and countless other sources. EPA details in the ANPR the methods it could use not only to regulate the specific emissions from those sources, but also to set radical new standards for the *design and operation* of those sources. Virtually the only greenhouse gas emissions the ANPR does not cover are the CO₂ emissions exhaled in our collective breath.

From a legal standpoint, EPA believes the CAA gives it full authority to take such invasive action. In fact, EPA begins its discussion of relevant legal authorities with the statement, “[t]he CAA provides broad authority to combat air pollution. Cars, trucks, construction equipment, airplanes, and ships, as well as a broad range of electric generation, industrial, commercial and other facilities, are subject to various CAA programs.” 73 Fed. Reg. at 44417. EPA ultimately concludes that, because regulation of motor vehicles under Title II would lead to regulation under other CAA provisions, it should use the ANPR to outline in great detail the wide range of CAA programs it believes it can invoke and even tangentially apply to greenhouse gas emissions.

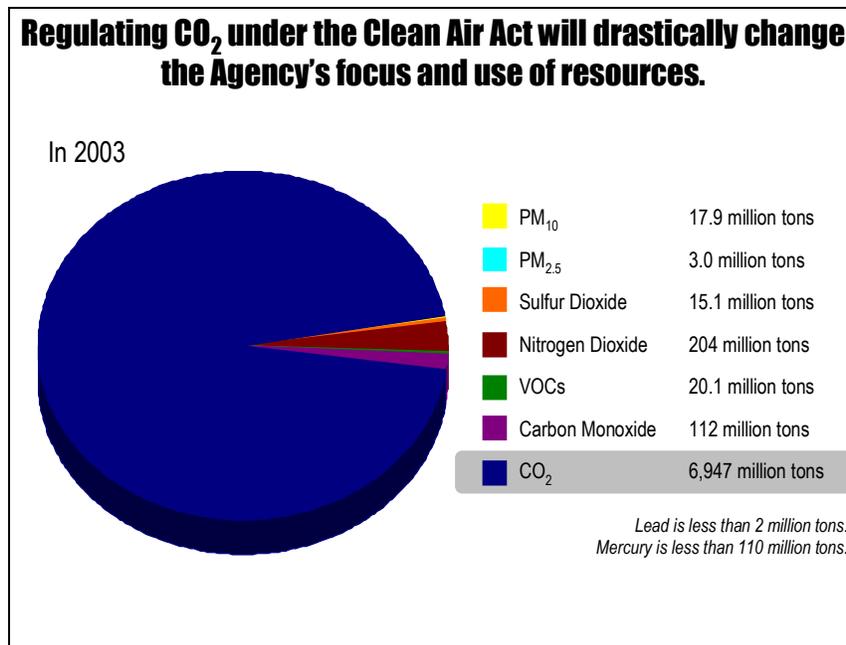
Many of EPA’s suggested regulatory options would reshape business models and long-term planning for manufacturers, parts suppliers and vendors. EPA routinely suggests radical options such as engine redesign, fuel switching, new infrastructure, equipment and work practice standards, product redesign and aerodynamics, early retirement of equipment, and even sector-specific cap-and-trade programs. EPA makes these suggestions with little or no concern for the fate of businesses engaged in these particular sectors. For instance, EPA nonchalantly suggests replacing two-stroke gasoline engines in all handheld lawn care applications and recreational vehicles with four-stroke engines. If carried out, such a regulation would literally eliminate an entire line of business for lawn care equipment and recreational vehicle manufacturers.

Some technical and operational changes presented in the ANPR border on the absurd. For instance, a common solution EPA suggests for most mobile sources (cars, trucks, planes, trains and motorcycles) is a regulatory limit on speed. In other words, force Americans to drive (or fly, cruise or float) slower.

EPA truly believes it can control the economy through the programs embedded within the CAA. This is far too much economic control by an agency that was created by an Executive Order without an overarching mission set forth by Congress.

B. Greenhouse gases are not suited for regulation under the Clean Air Act.

The fundamental problem with using the CAA to control greenhouse gas emissions is that CO₂ is a much different gas than any other gas typically covered by the Act. For one thing, it is emitted in much greater quantities. As of 2003, there was roughly 19 times more CO₂ in the atmosphere than the six existing CAA criteria pollutants combined:



Because CO₂ is emitted in far greater quantities by a much wider range of sources, the thresholds for regulation built into various CAA sections (for instance, those dealing with PSD, Title V and Hazardous Air Pollutants) are so low that they will “catch” a much broader segment of the population than Congress could have intended when it wrote the CAA.¹

CO₂ also differs from other CAA-covered gases in that it has a long atmospheric lifetime and is capable of long-range transport. CO₂ emissions from the U.S. transport to other nations, and CO₂ emissions from other nations (such as China and India) transport to the U.S.² Put another way, even if the U.S. were to eliminate all of its greenhouse gas emissions today, our CO₂ levels would not be zero, and CO₂ concentration in the atmosphere would still increase. For this reason, any action to address greenhouse gas emissions must be international in scope. The programs in the ANPR would be domestic-only, and ultimately will do very little to curb global greenhouse gas concentrations.

C. An endangerment finding could lead to an unmanageable regulatory cascade.

The most troubling aspect of CAA regulation of greenhouse gases is that, despite the assertions of EPA and others, EPA simply cannot regulate “a little.” A finding of endangerment for motor vehicles under Section 202(a)(1), on its own, could trigger a regulatory cascade and force EPA to begin regulating through various other major CAA programs. According to EPA, “[w]hile no two endangerment tests are precisely the same,” 73 Fed. Reg. at 44419, they generally call for similar elements: whether the emissions cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. EPA notes that “similar” endangerment language is found in sections 108 (NAAQS), 111 (NSPS), 112 (HAPs), 115 (international air pollution), 211 (fuels), 213 (nonroad engines and vehicles), 231 (aircraft) and 615 (ozone protection). *Id.*

¹ For instance, facilities that emit greater than 250 tons per year of CO₂ (or, in the case of 28 industrial categories, 100 tons per year) will be subject to PSD permitting. The Chamber estimates over 1 million buildings will be exposed to PSD. An even greater number will be forced to obtain Title V operating permits, which has a 100-ton-per-year threshold. The number of regulated facilities balloons even further if CO₂ is designated a Hazardous Air Pollutant (HAP); the threshold for HAP regulation is 10 tons per year of a single pollutant or 25 tons per year of a combination of pollutants. Many homes easily cross the 10 ton-per-year threshold.

² EPA acknowledges in the ANPR that long-range transport of greenhouse gases is a serious problem, and suggests using CAA Section 179B as a means to address the issue. Section 179B requires EPA to approve a state implementation plan if the submitting state establishes that it would have met the relevant NAAQS but for emissions emanating from outside the United States. However, Section 179B appears only to apply to NAAQS. Moreover, in a response to a petition for rulemaking the Chamber submitted in December 2006 requesting implementation of Section 179B, EPA stated that it does not believe Section 179B provides material relief (i.e., place a state in attainment, mitigate certain nonattainment penalties) beyond the relief literally authorized by the statute.

It is therefore highly likely—maybe even inescapable—that an endangerment finding for mobile sources will lead to mandatory NAAQS and NSPS for CO₂, as well as the trigger of PSD and Title V permit obligations for hundreds of thousands of previously-unregulated businesses. I will discuss each of these.

1. *National Ambient Air Quality Standards (NAAQS)*

If EPA finds endangerment for mobile sources, NAAQS may be unavoidable. NAAQS are predicated on a finding of endangerment under Section 108, but once that finding is made, EPA has no choice but to begin the NAAQS process.

As Peter Glaser of Troutman Sanders LLP described to the House Select Committee on Global Warming on September 4, 2008, the process of establishing a NAAQS begins under Section 108 with EPA's publication of a "Criteria Document" describing the public health and welfare effects of the pollutant at issue. Section 108(a) obligates the EPA Administrator to issue such a document for pollutants (a) which may reasonably be anticipated to cause or contribute to air pollution that endangers public health or welfare; (b) which are emitted by "numerous or diverse mobile or stationary sources;" and (c) for which air quality criteria had not been issued prior to the date of enactment of the 1970 CAA, but for which EPA plans to issue air quality criteria.

Prongs (b) and (c) of Section 108 are easily satisfied for CO₂.³ Therefore, if EPA makes an endangerment finding for CO₂, a Criteria Document is inescapable. Section 108 is not optional; it states that EPA *shall* issue the list of criteria pollutants. Similarly, once CO₂ is listed as a criteria pollutant, NAAQS are inescapable. Section 109 states that EPA *shall* publish regulations prescribing NAAQS for every criteria pollutant, and Section 110 states that each state *shall* adopt and submit to EPA a plan for implementation, maintenance and enforcement of every NAAQS (called State Implementation Plans or SIPs).

EPA itself says that NAAQS for CO₂ will be extremely difficult. In the ANPR, EPA admits it would likely have to assess air quality assessment on a national scale, meaning the entire U.S. would either be designated attainment or non-attainment. Whether the entire U.S. is (literally) in non-attainment will depend where the Administrator sets the NAAQS.

If the entire country were designated nonattainment, every state would have to develop and submit a SIP that includes: Reasonably Available Control Measures

³ It has been argued by some that EPA may avoid issuing a Criteria Document even if it concedes endangerment, due to prong (c). However, the Second Circuit explicitly rejected this argument in *NRDC v. Train*, 545 F.2d 320 (2d Cir. 1976). In *Train*, EPA had conceded that lead endangers public health and welfare and is emitted by numerous or diverse sources, but EPA contended that it had discretion under prong (c) of Section 108 not to issue a Criteria Document. The Court rejected EPA's statutory interpretation, ruling that the third factor applied only to pollutants included on the initial list of pollutants to be regulated under the NAAQS program, which EPA was required to promulgate within thirty days after December 31, 1970. For more discussion of *Train*, see Peter Glaser, Responses to Questions of the Select Committee on Energy Independence and Global Warming, September 4, 2008, at 11.

(RACT); areas for interim progress toward attainment; an emissions inventory; NSR/PSD permits; and contingency measures to be implemented if the area does not meet the NAAQS by the attainment deadline. In addition, the federal government may only provide financial assistance, issue a permit or approve an activity in a nonattainment area to the extent it conforms with an approved SIP, and all transportation plans, programs and projects must conform to an approved SIP.

The purpose of a SIP for CO₂ is to reduce CO₂ and ensure that levels of the gas in the state's ambient air satisfy the NAAQS. If a state fails to submit or implement a SIP, or if it submits a SIP that is unacceptable to EPA, EPA has the power to impose sanctions or other penalties on that state. Typical sanctions include cutting off federal highway funds and setting more stringent pollution offsets for certain emitters. For CO₂, this means a state in nonattainment will be able to build as many bicycle paths as it wishes, but will have a difficult time financing and constructing highway improvements.

If, on the other hand, EPA sets the NAAQS above existing CO₂ levels, it would in essence be finding that no endangerment exists. Therefore, if EPA makes an endangerment finding, then EPA must set the NAAQS below existing CO₂ levels (and place the entire U.S. in nonattainment) in order to pass legal muster.

NAAQS for CO₂ could therefore easily result in a revolving door of punishment for state governments and their SIPs, for federal appropriators who cannot give money to states due to nonattainment constraints, for localities that have been redlined to new business, and for the millions of businesses forced to deal with abnormally stringent control measures. Foreign emissions will continue to waft over to the United States from nations such as China and India, keeping the nation in nonattainment. Businesses could eventually choose to move to other, more environmentally-lenient nations, harming our international competitiveness. To add insult to injury, the leakage of these emissions will only exacerbate our own domestic nonattainment problems. In short, NAAQS for CO₂ means nonattainment, possibly forever.

2. *New Source Performance Standards (NSPS)*

Much like NAAQS, NSPS are triggered by a finding of endangerment. Section 111 states that EPA *shall* include a category of sources in the NSPS list if it endangers public health or welfare. One year after the source category is listed, EPA *shall* publish regulations establishing federal standards of performance for new sources within such category. Current NSPS categories include boilers, landfills, petroleum refineries and turbines; there are 70 categories and sub-categories in all. A “standard of performance” is defined in pertinent part as “a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction.” This standard is better known as “best demonstrated technology.”

Once EPA has established standards of performance, states are required to submit to the agency a procedure for implementing and enforcing such standards for new or modified sources located in the state. In addition, EPA must promulgate regulations

setting forth procedures for state establishment of standards for *existing* sources. This process is similar to the SIP process for NAAQS.

EPA theorizes in the ANPR that it could use a cap-and-trade program in lieu of plant-by-plant standards of performance. However, the D.C. Circuit’s decision vacating the Clean Air Interstate Rule (CAIR) had not been issued prior to drafting of the ANPR. The CAIR decision calls into serious question, if not completely invalidates, EPA’s authority to create a cap-and-trade program on its own.

Therefore, it seems inevitable that an endangerment finding will force EPA to issue plant-by-plant standards of performance for CO₂, and businesses will have to install best demonstrated technologies pursuant to NSPS. If greenhouse gases were regulated, the categories would be limitless.⁴ The federal government and states may be forced to create a new NSPS “police force” to handle all the new categories.

3. *Prevention of Significant Deterioration (PSD)*

PSD is triggered the moment CO₂ becomes a “regulated pollutant” under the CAA. It happens instantaneously—sooner, even, than a NAAQS or NSPS.⁵ And it may have the greatest impact.

Under the CAA, should CO₂ be deemed regulated under the Act—even if the regulation is for vehicles or fuels and is specifically not directed at stationary sources—no new or existing “major” stationary source of CO₂ can be built or modified (if the modification increases net emissions) without first obtaining a PSD permit. Major sources are defined as either a source in one of 28 listed categories (mostly industrial manufacturers and energy producers) that emits at least 100 tons per year (tpy) of an air pollutant, or *any other source* with the potential to emit 250 tpy of an air pollutant.

According to a report released by the U.S. Chamber entitled “A Regulatory Burden: The Compliance Dimension of Regulating CO₂ as a Pollutant,”⁶ over one million businesses will be exposed to PSD for CO₂. Many of these are previously-unregulated establishments, such as:

- a. 260,000 office buildings;
- b. 150,000 warehouses;
- c. 92,000 health care facilities;
- d. 71,000 hotels and motels;
- e. 51,000 food service facilities;

⁴ EPA does not specify in the ANPR just how many new categories it would create NSPS for, but does discuss the creation of various “super-categories” covering major groupings of stationary sources. It is not clear whether such super-categories would withstand judicial review.

⁵ The Chamber does not believe an endangerment alone would trigger PSD. However, because so many provisions in the CAA are tied to endangerment, the moment regulation occurs through one of those programs, PSD applies.

⁶ Available at <http://www.uschamber.com/environment>.

- f. 37,000 churches and other places of worship; and
- g. 17,000 farms.

The PSD process is far from easy. Often it requires a determination of best available control technologies (BACT), performed on a case-by-case basis and with considerable cost and burden placed on the applicant.⁷ For sources covered for other pollutants, PSD can take months or even years, and can cost hundreds of thousands or

⁷ The existing BACT determination process under the CAA for covered pollutants typically involves a lengthy five-step process, with a great deal of the legwork handled by the regulated source:

1. *Identification of available pollution control options.* Applicants must determine all “air pollution technologies or techniques with a practical potential for application to the emissions unit and the regulated pollutant under evaluation.” The search for available pollution control options is relatively limitless, and can extend to: technology vendors; federal, state, and local NSR permits; technology or emissions control practices required under other CAA programs; environmental consultants; technical journals and reports; and air pollution control seminars.
2. *Elimination of technically infeasible options.* To determine whether a control technology is technically feasible, an evaluation must be made of its availability and applicability. A technology is “available” when it has been licensed and can be obtained through ordinary commercial channels, as opposed to a concept or experimental technology. A technology is “applicable” if its emissions control qualities or characteristics are physically or chemically compatible with the emissions stream being evaluated, taking into consideration the chemical and physical characteristics of the emissions stream.
3. *Ranking of remaining control technologies by control effectiveness.* Technologies not eliminated by Step 2 above are ranked, from best to worst, according to their emissions reduction potential. Manufacturing data, engineering estimates, and determinations for other permits should be considered in determining achievable emissions control. Data to be considered includes, but is not limited to: expected emission rate (e.g., tons per year); emissions performance level (e.g., pollutant removal efficiency); emissions per unit product (e.g., parts per million, lbs/mmBtu); expected emissions reduction (e.g., tons per year); economic impacts of technology (e.g., total annualized costs, cost-effectiveness, incremental costs); environmental impacts resulting from application of technology (e.g., impacts on other media such as soil or water); and energy impacts (e.g., significant energy use or conservation).
4. *Evaluation of the most effective controls (considering energy, environmental, and economic impacts) and documentation of the results.* The energy impact analysis is essentially a determination of the amount of energy that must be expended to obtain incremental emissions reductions. The economic analysis compares the costs of control options as an element of their efficiencies to various technologies. The environmental impact analysis includes consideration of secondary or collateral impacts from use of the technology (e.g., production of other pollutants; waste products or by-products that affect water or groundwater).
5. *Making of the BACT selection.* The regulated source submits proposed BACT selections to the state permitting agency, which makes the final selection.

EPA NEW SOURCE REVIEW WORKSHOP MANUAL (draft), at B.6 (1990). Even more troubling is the fact that BACT is determined at the state level (and will thus vary from state to state), and BACT for CO₂ will be subject to a great deal of interpretation. Some states may decide that BACT requires energy efficiency measures, while others could conceivably decide that BACT for a coal-fired power plant requires replacement with a wind farm.

even millions. State agencies will be crippled by the weight of these many new permit applications.

PSD is a preconstruction requirement, and applies to new construction or modifications. EPA estimates that it currently issues two to three hundred PSD permits annually. EPA does not process a large number of PSD permits because, at present, few facilities emit enough of a regulated pollutant to cross the 100/250 tpy threshold. *See, e.g.,* chart entitled “Regulating CO₂ under the Clean Air Act will drastically change the Agency’s focus and use of resources,” page 5, *supra*. If this number were to balloon to just thirty or fifty thousand new PSD permits, EPA and state agencies would literally crumble under their own weight. And businesses forced to comply with PSD will be barred from construction for potentially long periods of time, immediately placing our economic development at risk. If the PSD burden is too great, many businesses will simply not undertake new construction projects or modifications.

Moreover, once a source is classified as a major source for one pollutant, it is considered a major source for all other regulated pollutants under the CAA. As a result, the tens of thousands of actual PSD sufferers may now have to install BACT not only for CO₂, but also potentially for nitrous oxide, particulate matter, lead, mercury, sulfur dioxide, and other pollutants prior to any new construction. The regulatory burden is so enormous, and the number of required PSD permits so staggering, that construction in cities throughout the nation will literally stop the minute CO₂ is regulated under the CAA.

4. *Title V*

Title V (operating permits) poses a similar problem to PSD, although the permit process itself is not nearly as onerous as PSD. However, Title V reaches an even broader segment of society, because it applies to all sources that emit over 100 tons per year of an air pollutant, regardless of source categories. And Title V includes a citizen suit provision that, if exploited, could have severe consequences because each permit application could be challenged by any citizen.

When a source becomes subject to Title V, it must apply for a permit within one year of the date it became subject. The permitting authority then uses this information to issue the source a permit to operate, as appropriate. A Title V source generally may not operate without a permit.

EPA estimates there are 15,000 to 16,000 Title V sources in the U.S. Because the threshold for Title V is 100-tpy across the board, well over 1.2 million new sources will be subject to Title V permitting.⁸ EPA estimates in the ANPR that 550,000 new permits will be required under Title V, but gives no support for this calculation. EPA admits that

⁸ The Chamber estimates 1.2 million new buildings will be exposed to PSD, when the threshold is 100 tpy for 28 specific industries and 250 tpy for everyone else. Because the threshold for Title V is 100 tpy regardless of source category, the number of Title V permittees will be at least 1.2 million, and will very likely be much greater.

“[t]he sheer volume of new permits would heavily strain the resources of state and local Title V programs.”

The Title V permitting authority must take final action on permit applications within 18 months of receipt. EPA has 45 days from receipt of a proposed permit to object to its issuance, and *citizens have 60 days to petition EPA to object*. It is therefore conceivable—likely, even—that activist groups could challenge every single Title V permit and bring nationwide operations to a screeching halt. Again, like PSD, Title V is triggered the moment CO₂ becomes a regulated pollutant under the CAA.

III. Congress Must Pass Legislation Preventing EPA from Regulating Greenhouse Gases Under the Clean Air Act.

In the introduction to the ANPR, EPA states:

[T]he ANPR illustrates the complexity and interconnections inherent in CAA regulation of GHGs. These complexities reflect that the CAA was not specifically designed to address GHGs and illustrate the opportunity for new legislation to reduce regulatory complexity. However, unless and until Congress acts, the existing CAA will be applied in its current form.

73 Fed. Reg. at 44,397 (emphasis added). EPA makes clear that, despite its own reservations about applying the CAA to greenhouse gases, it intends to proceed with actual regulations unless Congress steps in.⁹

This summer, Congresswoman Marsha Blackburn introduced H.R. 6666, a bill that would prevent EPA from regulating greenhouse gases under the CAA. The Chamber strongly urges this Committee to consider similar legislation.

While Congress is grappling with this complex issue, EPA, through the ANPR, has gift-wrapped a solution none of us want. The debates in Congress over climate change certainly give the appearance that Congress believes it alone should set climate policy. Although disagreement remains over what that policy ultimately should be, the Chamber firmly believes that Congress is the proper institution to make those decisions, and strongly urges Congress to enact legislation prohibiting EPA from regulating greenhouse gases under the Clean Air Act.

Thank you for the opportunity to testify today. I look forward to answering any questions you may have.

⁹ It is important to recognize that most of the Executive Branch does not believe the CAA is the appropriate vehicle to regulate greenhouse gases. Presently, nine federal agencies have expressed their strong disapproval. Even EPA Administrator Stephen Johnson shares this view in his preamble to the ANPR.