

whether global warming was occurring or whether humans' impact on any global warming was significant. These commenters also suggested that global warming, if real, would have beneficial impacts (e.g., helping prevent another ice age, increasing agricultural production) that could outweigh any adverse effects. Several commenters argued that since the causes and effects of global climate change occur on a worldwide basis, regulation of only U.S. motor vehicles would be neither effective nor fair.

Commenters also addressed whether it is technologically feasible to reduce GHG emissions from new motor vehicles. Some commenters described categories of technologies that can substantially reduce CO₂ emissions from gasoline-powered passenger cars and light trucks, including vehicle load reduction, engine improvements, improved transmissions, integrated starter generators, and hybrid-electric drive trains. Vehicle load reduction strategies include reduced vehicle mass, reduced aerodynamic drag, reduced tire rolling resistance, and reduced accessory loads. Engine improvement strategies include improved specific power and gasoline direct injection. Improved transmission strategies include 5- and 6-speed automatic transmissions, 5-speed motorized manual gearshifts, and continuously variable transmissions. Other commenters asserted that EPA may not regulate motor vehicle GHG emissions by setting fuel economy standards inasmuch as Congress entrusted fuel economy standard-setting to the Department of Transportation (DOT) under the Energy Policy and Conservation Act (EPCA).

Finally, commenters considered whether EPA has a mandatory duty to regulate motor vehicle GHG emissions. Some commenters agreed with petitioners that the Cannon Memorandum and EPA's website statements triggered an obligation under CAA section 202(a)(1) to set CO₂ standards. Other commenters countered that the Cannon Memorandum and EPA website statements are not formal EPA findings for the purposes of exercising statutory authority. They asserted that for findings to provide a sufficient legal basis for regulating under section 202(a)(1), they must be established through a public notice-and-comment process.

V. EPA Response

After careful consideration of petitioners' arguments and the public comments, EPA concludes that it cannot and should not regulate GHG emissions

from U.S. motor vehicles under the CAA. Based on a thorough review of the CAA, its legislative history, other congressional action and Supreme Court precedent, EPA believes that the CAA does not authorize regulation² to address global climate change. Moreover, even if CO₂ were an air pollutant generally subject to regulation under the CAA, Congress has not authorized the Agency to regulate CO₂ emissions from motor vehicles to the extent such standards would effectively regulate car and light truck fuel economy, which is governed by a comprehensive statute administered by DOT.

In any event, EPA believes that setting GHG emission standards for motor vehicles is not appropriate at this time. President Bush has established a comprehensive global climate change policy designed to (1) answer questions about the causes, extent, timing and effects of global climate change that are critical to the formulation of an effective, efficient long-term policy, (2) encourage the development of advanced technologies that will enable dramatic reductions in GHG emissions, if needed, in the future, and (3) take sensible steps in the interim to reduce the risk of global climate change. The international nature of global climate change also has implications for foreign policy, which the President directs. In view of EPA's lack of CAA regulatory authority to address global climate change, DOT's authority to regulate fuel economy, the President's policy, and the potential foreign policy implications, EPA declines the petitioners' request to regulate GHG emissions from motor vehicles.

A. EPA's Legal Authority Under the CAA

As summarized above, many commenters on the petition raised important legal issues regarding EPA's authority to issue global climate change regulations under the CAA. Two EPA General Counsels previously addressed the issue of EPA's authority to impose CO₂ emission control requirements. Both found that CO₂ meets the CAA definition of "air pollutant" and could therefore be subject to regulation under one or more of the CAA's regulatory provisions if the applicable statutory criteria for regulation were met. Both also noted, however, that the Agency had not made the requisite findings

under any CAA provision for regulation of CO₂ emissions. Significantly, the past general counsels reached their conclusions prior to the Supreme Court's decision in *Brown & Williamson*, which cautions agencies against using broadly worded statutory authority to regulate in areas raising unusually significant economic and political issues when Congress has specifically addressed those areas in other statutes.

Because the petition seeks CAA regulation of GHG emissions from motor vehicles to reduce the risk of global climate change, EPA has examined the fundamental issue of whether the CAA authorizes the imposition of control requirements for that purpose. As part of that examination, EPA's General Counsel, Robert E. Fabricant, reviewed his predecessors' memorandum and statements, as well as the public comments raising legal authority issues. The General Counsel considered the text and history of the CAA in the context of other congressional actions specifically addressing global climate change and in light of the Supreme Court's admonition in *Brown & Williamson* to "be guided to a degree by common sense as to the manner in which Congress is likely to delegate a policy decision of such * * * magnitude to an administrative agency." In a memorandum to the Acting Administrator dated August 29, 2003, the General Counsel concluded that the CAA does not authorize EPA to regulate for global climate change purposes, and accordingly that CO₂ and other GHGs cannot be considered "air pollutants" subject to the CAA's regulatory provisions for any contribution they may make to global climate change. Accordingly, he withdrew the Cannon memorandum and statements by Mr. Guzy as no longer expressing the views of EPA's General Counsel. The General Counsel's opinion is adopted as the position of the Agency for purposes of deciding this petition and for all other relevant purposes under the CAA.

As summarized above, commenters supporting the petition claim that section 202 of the CAA provides EPA with broad authority to set standards for motor vehicle emissions of CO₂ and other GHGs to the extent those emissions cause or contribute to global climate change. At the same time, other commenters correctly note that (1) no CAA provision specifically authorizes global climate change regulation, (2) the only CAA provision specifically mentioning CO₂ authorizes only "nonregulatory" measures, (3) the codified CAA provisions related to global climate change expressly

² "Regulation" as used in this section of the notice refers to legally binding requirements promulgated by an agency under statutory authority. It does not include voluntary measures that emission sources may or may not undertake at their discretion.