

Regulating Greenhouse Gas Emissions Under Section 115 of the CAA

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Overview of CAA Section 115: International Air Pollution

- Clean Air Act Section 115(a)

“Endangerment of public health or welfare in foreign countries from pollution emitted in United States. Whenever the Administrator, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that *any air pollutant or pollutants emitted in the United States cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country* or whenever the Secretary of State requests him to do so . . . the Administrator shall give formal notification thereof to the Governor of the State in which such emissions originate.” 42 U.S.C. § 7415(a).

Overview of CAA Section 115: International Air Pollution

- Clean Air Act Section 115(b)

“Prevention or elimination of endangerment. The notice of the Administrator shall be deemed to be a finding under section 7410(a)(2)(H)(ii) of this title which *requires a plan revision with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment referred to in subsection (a).* Any foreign country so affected by such emission of pollutant or pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable implementation plan.” 42 U.S.C. § 7415(b).

Overview of CAA Section 115: International Air Pollution

- Clean Air Act Section 115(c)

“**Reciprocity.** This section shall apply only to a foreign country which the Administrator determines *has given the United States essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this section.*” 42 U.S.C. § 7415(c).

2016 Report Addressing Regulation of GHGs Under CAA Section 115

- Report by Michael Burger, Ann E. Carlson, Michael B. Gerrard, Jayni Foley Hein, Jason A. Schwartz, Keith J. Benes
- Available at <http://policyintegrity.org/publications/detail/CAA-section-115-report>



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LEGAL PATHWAYS TO REDUCING GREENHOUSE GAS EMISSIONS UNDER SECTION 115 OF THE CLEAN AIR ACT

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Benefits of Using Section 115 to Regulate GHG Emissions

- Timely
 - Endangerment Finding under Section 202 Made and Upheld
 - Paris Agreement Provides Reciprocity
- Legal Backstop if CPP Litigation Successful
- Comprehensive
 - Avoids Section 111(d)'s Sector by Sector Approach
 - Can Include Transportation Sources
- Market Mechanisms: Section 110 Allows for Cap and Trade

Potential Issues with Using Section 115 to Regulate GHGs

- Few cases address CAA Section 115
 - *Her Majesty the Queen in Right of Ontario v. U.S. EPA*, 912 F.2d 1525 (D.C. Cir. 1990).
 - *Thomas v. New York*, 802 F.2d 1443 (D.C. Cir. 1986).
- Can Sections 115/110 Regulate GHGs?
- Scope of Reciprocity Determination?
- How Regulations Implemented?

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