Yesterday, American Chemistry Council and a coalition of other industry groups filed a petition for U.S. Supreme Court review of the D.C. Circuit Court of Appeals' June, 26 2012 decision upholding the Environmental Protection Agency's greenhouse gas rules. As Dan previously discussed here, the D.C. Circuit denied rehearing of its decision in December. The American Chemistry Council petition joins several other petitions that state and industry groups have filed over the past few months seeking review of the D.C. Circuit's decision.

The challenged EPA rules include:

- Endangerment Finding: determining that six greenhouse gases collectively are an air pollutant that endangers public health or welfare, and that vehicles contribute to greenhouse gas pollution;
- Tailpipe (or Vehicle) Rule: setting greenhouse gas emissions standards for new vehicles;
- Timing Rule: extending the Clean Air Act's Prevention of Significant Deterioration (PSD) program to facilities emitting greenhouse gases as of the date the first vehicles are certified under the Tailpipe Rule; and
- Tailoring Rule: phasing the statutory emissions threshold for regulating and permitting stationary sources of greenhouse gases.

The rulemakings followed the U.S. Supreme Court's 2007 ruling in *Massachusetts v. EPA* that greenhouse gases are an "air pollutant" subject to regulation under the Clean Air Act. Industry groups challenged the greenhouse rules in multiple lawsuits, which the U.S. Court of Appeals for the D.C. Circuit consolidated into *Coalition for Responsible Regulation, Inc. v. EPA*. (For a graphical illustration of the issues before the D.C. Circuit Court and the Court's decision path, check out my flowchart.)

In a press release yesterday, the National Federation of Independent Businesses, one of the petitioners, offered the following (unsurprising) quote about the petition for Supreme Court review:

> Regulation of greenhouse gases through the CAA only creates cumbersome new burdens for small businesses. . . . If the EPA's rules are allowed to stand the negative impact they will have on the future of small-business owners will be great, and the cost to the stability of our economy will be devastating. NFIB urges the Supreme Court to take up this case and to ultimately strike down EPA's unprecedented regulations.

Will the Supreme Court take the case? I agree with Dan's opinion in his earlier post that the High Court is likely to deny cert. in this case. *Massachusetts v. EPA* largely compels the D.C. Circuit's decisions on the Endangerment Finding and Tailpipe Rule, and it does not seem likely the current Court will overrule *Massachusetts*. I further suspect the Supreme Court is not eager to wade into the messy Tailoring rule arguments. If the Supreme Court does agree to review the case, we might see an interesting standing opinion, as the D.C. Circuit dismissed the Timing Rule and Tailoring Rule claims for lack of standing. Stay tuned!