

## CLIMATE CHANGE & SUSTAINABILITY ALERT



Shook, Hardy & Bacon applies a unique multidisciplinary approach to the business challenges, risks and opportunities arising from today's international focus on climate change and sustainability.

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### AIR: EPA ISSUES FINAL ENDANGERMENT AND CAUSE-OR-CONTRIBUTE FINDINGS FOR GHGS UNDER THE CLEAN AIR ACT

The Environmental Protection Agency (EPA) has taken the next step toward promulgating greenhouse gas (GHG) emissions regulations under the Clean Air Act (CAA), confirming a preliminary finding that GHGs “threaten the public health and welfare of current and future generations.”

EPA's issuance of the finding coincides with the opening of the United Nations Framework Convention on Climate Change in Copenhagen. The agency's action is a response to *Massachusetts v. EPA*, 529 U.S. 497 (2007), which required EPA to determine, in the context of new motor-vehicle standards, whether GHGs are air pollutants covered by the CAA.

Under CAA section 202(a), EPA has found that GHGs in the atmosphere may reasonably be anticipated to endanger both public health and public welfare. Specifically, the administrator defines the “air pollution” referred to in CAA section 202(a) as the mix of six long-lived and directly-emitted GHGs: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>).

According to the agency, EPA's endangerment finding is based on studies which demonstrate that concentrations of the six GHGs have risen to unprecedented levels due to emissions from human activity. EPA has also concluded that such high levels are very likely causing average temperature increases and other climate changes.

EPA's initial proposed finding was published in April 2009 and was subject to a 60-day public comment period that yielded more than 380,000 comments. The scientific bases for the original proposal were challenged in an administrative proceeding brought by the U.S. Chamber of Commerce. See *Petition for EPA to Conduct Its Endangerment Finding Proceeding On The Record Using Administrative Procedure Act §§ 556 and 557*, EPA Docket ID Number EPA-HQ-OAR-2009-0171 (filed June 23, 2009).