

CLIMATE CHANGE & SUSTAINABILITY ALERT



A 60-day public comment period will be available once EPA's proposed greenhouse gas findings are published in the Federal Register. The agency's findings about public health and environmental impact will, if and when finalized, provide a foundation for costly federal regulation.

AIR: EPA ISSUES PROPOSED ENDANGERMENT AND CAUSE-OR-CONTRIBUTE FINDINGS FOR GREENHOUSE GAS EMISSIONS UNDER THE CLEAN AIR ACT

The U.S. Environmental Protection Agency (EPA) has proposed to begin regulating greenhouse gases (GHGs) under the Clean Air Act with a finding that GHGs “threaten the public health and welfare of current and future generations.”

EPA's proposal responds to the U.S. Supreme Court's ruling in *Massachusetts v. EPA*, 529 U.S. 497 (2007), which required EPA to determine whether GHGs are air pollutants covered by the Clean Air Act, in the context of new motor-vehicle standards. EPA's proposed finding states, “climate change is an enormous problem,” and that the GHGs responsible for climate change “endanger public health and welfare within the meaning of the Clean Air Act.”

Administrator Lisa Jackson signed EPA's proposed endangerment finding on April 17, 2009; it is composed of two distinct findings: (1) the “Endangerment Finding,” and (2) the “Cause or Contribute Finding.” In the endangerment finding, Jackson proposes that carbon dioxide (CO₂) and five other GHG emissions—methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆)—are harmful to the public health and the environment.

In the cause-or-contribute finding, EPA proposes that the combined emissions of CO₂, CH₄, N₂O, and HFCs from new motor vehicles and motor-vehicle engines contribute to the atmospheric concentrations of these GHG emissions, and thus, to the threat of climate change. According to EPA, the proposed finding “confirms that greenhouse gas pollution is a serious problem now and for future generations.”

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

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EPA states that the proposed finding, if finalized, would not by itself impose any requirements on the industry or other entities. The proposed finding does not include any proposed regulations. It also does not include any specific targets for reducing GHGs or new requirements for energy efficiency in, for instance, vehicles, power plants or industry.

The proposal has, however, set in motion a process that will eventually allow, for the first time in the United States, the regulation of GHGs that contribute to climate change under the authority of the Clean Air Act. Because many view the Act as ill-equipped to regulate GHGs, the proposed finding may further pressure Congress to enact climate-change legislation outside of the Clean Air Act.

Environmental organizations are hailing the proposed endangerment finding. But industries and business groups, including the U.S. Chamber of Commerce, have expressed concern that the U.S. economy would be placed in grave danger were EPA to begin regulating the six GHGs, citing increased costs of operating a business to pay for clean technology and more expensive fuel.

EPA will accept public comments on the proposed rule 60 days after publication in the *Federal Register*. A pre-publication copy of the proposal is available at www.epa.gov/climatechange/endangerment.html. After publication in the *Federal Register*, the proposal will be available at www.regulations.gov, under Docket ID number EPA-HQ-OAR-2009-0171. More general information about the proposal is available at www.epa.gov/climatechange/endangerment.html.