

Legal Updates & News

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EPA Endangerment Finding: Clean Air Act GHG Regulation Gets Major Boost

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by [Michael Steel](#)

The U.S. Environmental Protection Agency (“EPA”) today proposed to make a finding under the federal Clean Air Act that certain greenhouse gases “threaten the public health and welfare of current and future generations.” Referred to as an endangerment finding, this is the first step in regulating greenhouse gases under existing provisions of the Act.

The proposal flows from the April 2007 holding of the U.S. Supreme Court in *Massachusetts v. EPA*, which found that greenhouse gases are air pollutants covered by the Act. The Court held that, given that the Act applies to these pollutants, the EPA was required to determine whether or not emissions of greenhouse gases from new motor vehicles cause or contribute to air pollution that could reasonably be anticipated to endanger public health or welfare, or whether the science was too uncertain to make a reasoned decision. The EPA now believes the science supports an endangerment finding.

The endangerment finding could result in new permit requirements and costly control technologies for both mobile and stationary sources of greenhouse gases. EPA’s recent proposed greenhouse gas reporting rule, which would apply to sources emitting 25,000 metric tons of CO₂-equivalent greenhouse gases, suggests that the EPA may, at least at first, target only vehicles and larger stationary sources.

Still, many commentators have argued that the Clean Air Act is ill-suited to the job of regulating greenhouse gases. They believe that the distinct nature of global warming calls for a new approach – one not foreseen by the Clean Air Act. Recently, we reported to you on the federal legislation introduced by Congressman Henry Waxman, the American Clean Energy Security Act, or “ACES,” which would set up a new approach to GHG regulation, rather than trying to fit the program into the existing Clean Air Act framework (see [“ACES a Winning Hand? New Clean Energy Legislation at the Starting Gates”](#)). Proceeding under the Clean Air Act could, however, be a faster route to regulation than Congressional action.

So, the battle is joined. Who will have the winning hand: Congress with its ACES, or EPA with the Clean

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