

## REGULATION IN THE AIR

On Dec. 7, 2009, the U.S. Environmental Protection Agency announced its “endangerment finding”: that greenhouse gases threaten the public health and welfare of the American people and that GHG emissions from on-road vehicles contribute to the threat. This final finding was largely unchanged from the preliminary “Proposed Endangerment and Cause or Contribute Finding for GHGs” the EPA published in the *Federal Register* on April 24, 2009, despite its receipt of more than 380,000 public comments.

In its announcement, the EPA explained that GHGs are a threat because they contribute to climate change, which will cause harm to human health and the welfare of future generations. It based its finding that GHG emissions from on-road vehicles contribute to this threat on the fact that GHGs emissions from on-road vehicles are approximately 4 percent of global GHG emissions and more than 23 percent of U.S. GHG emissions. The finding addresses six specific greenhouse gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

This finding is significant because it will allow the EPA to regulate GHGs under the Clean Air Act, an issue that has been hotly debated in Congress since climate change first became a global issue. Specifically, it paves the way for the EPA to regulate automobile emissions. Though the endangerment finding itself does not impose any requirements on industry or other entities, it opens the door to future regulation under the CAA that will have effects far beyond the automotive industry.

The endangerment finding was the EPA’s response to a 2007 Supreme Court decision that declared GHGs air pollutants under the CAA. In the decision, the court held that the EPA must determine whether GHG emissions from new motor vehicles cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision. In announcing the endangerment finding, EPA has said it’s the former.

### SHORT- AND LONG-TERM EFFECTS

In the short term, the endangerment finding allows the EPA to finalize the GHG emission standards for light-duty vehicles it proposed jointly with the

U.S. Department of Transportation’s National Highway Traffic Safety Administration on Sept. 15, 2009. The implementation of these standards would establish a national program aimed at improving vehicle fuel economy and reducing GHGs. The proposed program would cover model years 2012 through 2016, setting miles-per-gallon requirements and maximum carbon emission levels per mile. The two agencies must finalize the joint proposal by March 31, making the EPA’s issuance of the endangerment finding quite timely.

Manufacturers, other businesses, and trade organizations are all debating the potential long-term effects of the finding. Many fear it will lead to the regulation of facilities that are not currently regulated under the CAA—those with large carbon footprints but relatively low emissions of traditional CAA pollutants—such as certain manufacturing plants, hospitals, and universities. Further, though the endangerment finding itself does not trigger major new source review or Title V permitting, the EPA recognizes that the finalization of the abovementioned GHG emission standards for light-duty vehicles would trigger changes to these CAA programs. To ward off some of these concerns, the EPA proposed a “Prevention of Significant Deterioration,” or Title V GHG “tailoring rule,” on Sept. 30, 2009, to address the potential impact of the endangerment finding on existing CAA-permitted facilities. The rule would ensure that PSD and Title V regulations apply only to emitters of 25,000 or more tons of GHGs per year.

Critics of the endangerment finding argue that the CAA is not flexible enough to regulate GHG emissions. Further, they argue, Congress currently is discussing less costly cap-and-trade alternatives for restricting emissions. Thus, even within groups that want to regulate GHG sources, there is no consensus on the proper mechanism to do so. The endangerment finding is not likely to resolve these disputes. Instead, it is more likely to lead to additional challenges as new laws and regulations on GHG emissions are promulgated in the future. ■



Many fear the U.S. EPA’s endangerment finding will lead to the regulation of facilities not currently regulated under the Clean Air Act.

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