



Memorandum

TO: Air Quality Subcommittee
Coal Policy Task Force

FROM: Tawny Bridgeford, General Counsel & Senior Vice President,
Regulatory Affairs

DATE: September 2, 2025

SUBJECT: EPA Proposes Reconsideration of 2009 Endangerment
Finding and Greenhouse Gas Vehicle Standards

The U.S. Environmental Protection Agency (EPA) recently published a [proposed rule](#) titled, "Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards" (Endangerment Finding Reconsideration), which would rescind the 2009 Endangerment Finding under Clean Air Act (CAA) section 202(a) as part of a rulemaking reconsideration package to repeal all vehicle greenhouse gas (GHG) emissions standards. According to EPA, "there have been developments in innovation, science, economics, and mitigation, as well as significant [U.S.] Supreme Court decisions that provide new guidance on how federal agencies should interpret the statutory provisions that Congress has tasked them with administering."

This rulemaking action follows an [announcement](#) in March that EPA had kicked off a formal reconsideration of the finding with the Office of Management and Budget and other agencies, along with a review of prior regulations and actions that rely on it. **Comments on the EPA's proposed rule are due Sept. 22, 2025**, following the agency's [recent extension](#) of the public comment period to accommodate additional [public hearing dates](#).

Relationship to EPA's Repeal of Power Plant GHG Emission Standards

EPA is treating its Endangerment Finding Reconsideration under CAA section 202(a) as a separate and distinct action from the agency's other reconsideration rulemaking in progress to repeal GHG emission standards for fossil fuel-fired power plants under CAA section 111 (also known as the Carbon Pollution Standards Repeal). Recall, EPA for the first time in 2009 interpreted CAA section 202(a) to authorize regulation of domestic GHG emissions from new motor vehicles and engines based on global climate change concerns. EPA then attempted to extend GHG emissions standards to additional CAA programs, including section 111 for coal-fired power plants.

EPA recognizes this historical reliance on the 2009 Endangerment Finding "in issuing subsequent endangerment findings and GHG regulations under other CAA provisions, including for certain stationary sources[.]" EPA emphasizes that it was "foreseeable" that "the Endangerment Finding would trigger a duty to regulate, and that extraordinarily stringent measures would be necessary under all of the EPA's separate statutory authorities . . . to have any potentially measurable impact on the identified harm." EPA instructs that "[f]or those actions that remain in effect, [the agency] has initiated or intend to initiate separate rulemakings that will address any overlapping issues."

As you are aware, EPA already [proposed](#) to repeal the Carbon Pollution Standards for coal-fired power plants under CAA section 111 before releasing the Endangerment Finding Reconsideration. EPA explains in the Endangerment Finding Reconsideration that "Congress used different authorizing language to address distinct issues for stationary sources regulated under CAA section 111[.]" Accordingly, EPA initiated a separate rulemaking to repeal the Carbon Pollution Standards for coal-fired power plants, "address[ing] prior findings and standards in light of the particular statutory language, policy concerns, and scientific information relevant to" CAA section 111.

In the Carbon Pollution Standards Repeal, EPA argues that "CAA section 111 is best read to require, or at least authorize the EPA to require, an Administrator's determination that an air pollutant emitted by a source category causes, or contributes significantly to, dangerous air pollution as a predicate to establishing emissions standards for that pollutant." EPA then determined that GHG emissions from fossil fuel-fired power plants do not contribute significantly to dangerous air pollution within the meaning of the statute. EPA emphasizes several points in making this determination including: (1) GHGs are global pollutants; (2) the U.S. power sector contributes a relatively minor share of GHG emissions compared to global concentrations; (3) the decline in power sector GHG emissions compared to total global GHG emissions; and (4) increased coal use in other countries.

The National Mining Association (NMA) filed [comments](#) supporting EPA's proposed Carbon Pollution Standards Repeal, including its decision to properly conduct an appropriate significant contribution analysis under CAA section 111(b)(1)(A). The NMA emphasized that because automobiles are different from power plants, and automobiles need only "contribute," not "contribute significantly," to warrant regulation, EPA should not have relied so heavily on its 2009 Endangerment Finding for automobiles under section 202 in asserting the authority to regulate power plants under section 111. We asserted that the two industries and legal standards raise different issues that EPA never grappled with in its prior rulemaking actions and supported EPA's decision to finally take a hard look at that question now.

While EPA is seeking comment on "reliance interests in the Endangerment Finding and GHG emission standards issued under CAA section 202(a)," the Endangerment Finding Repeal is "limited to the regulatory provisions for GHG emission standards found in 40 CFR Parts 85, 86, 1036, and 1037" that address light- and medium- vehicles, heavy-duty engines, and heavy-duty vehicles. The agency made clear that it will "direct out of scope comments to the appropriate rulemaking docket for the applicable regulatory action." In other words, comments related to the regulation of GHGs from coal-fired power plants under CAA section 111 will be directed to that separate rulemaking docket.

Summary of EPA's Reconsideration of the 2009 Endangerment Finding and Vehicle GHG Emissions Standards

In this action, EPA proposes:

- **A primary legal basis** to repeal all GHG emissions standards for light-duty, medium-duty and heavy-duty vehicles and engines as "the best reading" of Clean Air Act section 202(a). EPA's repeal is based on four Supreme Court cases issued after the 2009 Endangerment Finding, including: (1) *Utility Air Regulatory Group v. EPA* (2014): "air pollutant" can mean different things in different sections of the CAA; (2) *Michigan v. EPA* (2015): regulation must consider costs and benefits to be rational unless clearly precluded by Congress; *West Virginia v. EPA* (2022): Congress must speak clearly to give EPA power over issues of economic and political significance; and *Loper Bright Enterprises v. Raimondo* (2024): EPA must use the best reading of the statute, not just a permissible reading.

EPA faults prior agency approaches to CAA section 202(a) that found endangerment and contribution "in the abstract for all potential CAA section 202(a) sources" (e.g., new vehicles and engines) to justify regulating GHG emissions, "without addressing the danger posed by any particular source category or the causal role of that particularly source category in any identified change." EPA discusses in detail why EPA improperly "prescribe[d] standards in response to global climate change concerns rather than local or regional concerns, granted 'procedural discretion' to issue standalone findings without considering regulatory response, and severed the finding of endangerment from the finding of contribution to that endangerment." Accordingly, EPA finds that "it [was] impermissible to prescribe emission standards without making the source- and air-pollutant specific findings required by the statute."

EPA now asserts that the statutory language in section 202(a) is "best read as authorizing the Agency to identify and regulate . . . air pollutants that cause or contribute to air pollution that itself endangers public health and welfare through local or regional exposures." EPA also argues that "CAA section 202(a) requires issuing emission standards together with the findings necessary to invoke [the agency's] regulatory authority, rather than severing the regulatory action into separate endangerment and standards-setting proceedings."

Simply stated, EPA in 2009 isolated two questions of (1) whether GHGs from all sources endanger humans, and (2) whether motor vehicles contribute to GHG concentrations. Considering recent precedent, EPA asserts it must answer one question: Do GHGs from motor vehicles cause and contribute to the endangerment of human health and welfare on a local or regional scale? EPA proposes that motor vehicles do not cause and contribute to endangerment because of too many links in the causal chain to override the harm caused by regulation.

- **An alternative basis** to rescind the Administrator's prior findings in 2009 because the EPA unreasonably analyzed the scientific record and because developments cast significant doubt on the reliability of the findings. Specifically, EPA finds the Endangerment Finding "papered over substantial uncertainties in the scientific record and failed to draw the required connection between GHG emissions from a class or classes of new motor vehicles and global climate change concerns." EPA also finds that the agency's prior "predictive judgments involve ranges of assumptions that largely fail to satisfy the statutory standard for regulation and because the more pessimistic assumptions have not been borne out in empirical data and peer-reviewed studies through 2025."

EPA relies heavily on a 2025 Department of Energy (DOE) [report](#) that evaluates the impact of GHGs on U.S. climate. DOE separately published a [notice of availability](#) of this report and a separate request for comments due on Sept. 2, 2025. DOE's report "reviews scientific certainties and uncertainties in how anthropogenic carbon dioxide (CO₂) and other greenhouse gas emissions have affected, or will affect, the Nation's climate, extreme weather events, and selected metrics of societal well-being."

- **Another alternative basis** to repeal GHG emission standards because no requisite technology for vehicle and engine emission control can address the global climate change concerns identified in 2009 without risking greater harms to public health and welfare.

Importantly, EPA addresses the critical issue of preemption. EPA asserts that the proposed repeal would not impact federal preemption of emission standards for new motor vehicle and engine emission standards. EPA also argues that "the CAA would continue to preempt Federal common-law claims for GHG emissions," relying on *Am. Elec. Power Co. v. Connecticut*. In that case, the Supreme Court held that "Congress delegated to EPA the decision whether and how to regulate" such emissions. EPA requests comments on these interpretations.

Next Steps

Based on the advice of outside counsel, the NMA is considering filing comments that: (1) agree that the "best reading" of the statute is that EPA must not isolate the question of endangerment from whether a source category contributes to that endangerment, and that the question of whether regulation of the source would address any endangerment is relevant in determining whether regulation is warranted; and (2) agree that EPA's reconsideration of whether new light duty cars and trucks contribute to endangerment does not conflict with *Massachusetts v. EPA* because the Court's subsequent decision in *UARG v. EPA* recognizes that the definition of air pollutant can be different in different CAA sections, and EPA's proposal only addresses section 202(a).

We welcome feedback from members on this proposed engagement in EPA's rulemaking to rescind the Endangerment Finding and repeal GHG emission standards for motor vehicles. **Please send all feedback to me at tbridgeford@nma.org by close of business Sept. 8, 2025.**

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