Comments on EPA's Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, 40 CFR Parts 85, 86, 600, 1036, 1037, and 1039 [EPA-HQ-OAR-2025-0194; FRL-12715-01-OAR] RIN 2060-AW71

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SUMMARY OF COMMENTS:

COMMENT 1: *U.S. policy actions are expected to have undetectably minimal, if any, direct impact on the global climate and any effects—which again are not expected to be detectable—will emerge if at all only with long delays.* Referring to U.S. emissions as "endangering" human health, public welfare and/or the environment is inaccurate, and referring to any individual or collective U.S. reductions as "combating climate change" or "taking action on climate," while *colloquially popular, is also factually inaccurate, reflecting among other deficiencies a profound misunderstanding of the scale of the issue. In truth, in contrast to the case of local air contaminants like particulates and ozone, even the most aggressive regulatory actions on GHG emissions from U.S. mobile or stationary sources cannot be expected to remediate alleged climate dangers to the U.S. public on any measurable scale. This is true even if one accepts the assumptions of most general circulation models (and there is great reason to not accept such assumptions as by design they bake in anthropogenic warming, as the Agency's proposal notes).*

The absence to date of clarity and emphasis on the lack of measurable impact from any regulatory approach on global climate trends enabled jurisprudence arguing, in short, "the evidence shows 'we must do "something"'; regulating (this or that sector's GHG emissions) is 'something'; therefore, we must do that." See generally, Massachusetts v. EPA*, 549 U.S. 497, 127 S Ct. 1438 (2007), and Id. 127 S Ct. at 1458. This in turn led to the Endangerment Finding, which has led to profound regulatory and other economic costs, distortions and dislocation of resources. It is therefore difficult to overstate the importance of this reconsideration in that it ultimately should assist in placing that critical point in perspective: there is no projected detectable climate impact (let alone benefit) from "climate" policies. Unfortunately, the United States (and some individual states) have imposed a suite of policies all ultimately attributable to the 2009 Endangerment Finding the Agency is now reconsidering.*

A decade of U.S. Supreme Court jurisprudence is highly relevant to this undertaking. First, of course, West Virginia v. EPA, 597 U.S. 697 (2022) *and* Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024) *make clear that the Endangerment Finding itself represents unlawful agency adventurism, claiming authority far beyond what Congress actually delegated the EPA.*

Further, while imposing no policies at all and imposing policies in the name of climate both constitute "doing nothing" to "combat climate change," imposing these policies is far worse than not doing so, and legally unjustifiable. In very short, there are tremendous economic, social and national security costs of the agency's surely unlawful exercise in gesture-policymaking, including but not limited to the electricity reliability crisis we are now being warned about by reliability organizations such as the North American Electric Reliability Corp. It is the epitome of all pain, no gain. Such folly runs headlong into Michigan v. EPA, 576 U.S. 743 (2015).

COMMENT 2: *Records suggest EPA's Endangerment Finding was unlawfully predetermined.*

Introduction

Government Accountability & Oversight, a 501c3 non-profit public policy group dedicated to assessing governmental policy and operations particularly in and effecting the areas of energy and environmental policy, provides these comments in response to your Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, https://www.federalregister.gov/documents/2025/08/01/2025-14572/reconsideration-of-2009-endangerment-finding-and-greenhouse-gas-vehicle-standards ("Proposed Reconsideration") (extended to 9/22/2025).

In part by this Proposed Reconsideration, the EPA is undoing years of policies that targeted ideologically disfavored products, activities, and industries in ways both admitted and pretextual, but all grounded directly or indirectly in that 2009 Endangerment Finding. These were, however, all-pain-no-gain, regulatory gestures never directly or clearly authorized by Congress, which a decade of Supreme Court jurisprudence has now relegated to the ash heap of history. EPA simply needs to formally acknowledge this, beginning with this Proposed Reconsideration.

Background

"Previous administrations used the Endangerment Finding to regulate emissions from automobiles, aircraft, agriculture equipment, power plants, and fossil fuel producers in order to drive partisan, left-wing policy goals such as electric vehicle mandates."[1] More bluntly, it was the basis for targeting politically disfavored facilities for closure. "The EPA's decision to rescind the Endangerment Finding will provide much needed regulatory relief, affordability, and consumer choice for the American people." *Id*. U.S. economic and national security also depend upon it. Reconsideration is the only rational approach to the Endangerment Finding which, like subsequent regulations that flowed therefrom[2], are not permissible as affirmed by subsequent U.S. Supreme Court jurisprudence. This includes *Utility Air Regulatory Group v. EPA*, 573 U.S. 302 (2014), *Michigan v. EPA*, 576 U.S. 743 (2015), *West Virginia v. EPA*, 597 U.S. 697 (2022), and *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), all clarifying the scope of the EPA's authority, admonishing against regulating in complete disregard of cost (particularly *Cf.* benefit), affirming that deciding how Americans get their electricity (i.e., seeking to force "generation shifting") is not within EPA's mission, and/or restating the basic principle that major policy determinations are the prerogative of Congress and not administrative agencies.

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[1] https://oversight.house.gov/wp-content/uploads/2025/09/National-Academies-of-Sciences-President-McNutt-re-Endangerment-Finding-Letter-09032025.pdf

[2] These include *but are not limited to* the "suite of standards" announced in April 2024. https://www.epa.gov/newsreleases/biden-harris-administration-finalizes-suite-standards-reduce-pollution-fossil-fuel Taking former Administrator Michael Regan at his word that each of these rules—invoking the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act—was issued *to force generation shifting to reduce greenhouse gas emissions*, https://www.scientificamerican.com/article/what-the-epas-new-plans-for-regulating-power-plants-mean-for-carbon/—all of these rules individually and collectively merit rescission, *prōtinus*. They each and collectively run afoul of *West Virginia v. EPA*, and the CWA and RCRA rules offend the rule against pretext, see *Dep't of Commerce v. New York*, 139 S. Ct. 2551 (2019). Unfortunately, the prior administration hid the ball, with the Agency denying in each of the subsequent rulemakings the true objective that its leadership had admitted mere weeks before *West Virginia* was handed down. See also, Comments of Government Accountability & Oversight on MOB ID: OMB-2025-0003-0001)(Comment Tracking Number: mal-jnv0-0pvf), https://govoversight.org/gao-to-trump-administration-take-the-bloody-shot/.

Unlike other policy areas (defense, education, etc.), EPA "climate" regulation does not promise to impact the climate. U.S. policy actions are expected to have undetectably small direct impacts on the global climate and effects, if any, will emerge only with long delays. Thus, in contrast with conventional air pollution control, the local effect of even drastic local actions will have *possible* but undetectable local effects, decades hence. Similarly, referring to U.S. emissions as "endangering" human health, public welfare and/or the environment is inaccurate, as is referring to any individual or collective U.S. reductions as "combating climate change" or "taking action on climate." As several distinguished researchers have recently publicized, this rhetoric deployed to promote this regulatory agenda reflects a profound misunderstanding of the scale of the issue.[3]

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[3] Consider the following case study, of U.S. motor vehicle emissions, recently compiled by five independent experts on this background and climate policies, from multiple disciplines, available at https://www.energy.gov/sites/default/files/2025-07/DOE_Critical_Review_of_Impacts_of_GHG_Emissions_on_the_US_Climate_July_2025.pdf: The scale problem can be illustrated with reference to U.S. motor vehicles. The EPA's 2009 Endangerment Finding focused on CO2 emissions from cars and light-duty trucks in the U.S. because Section 202(a) of Clean Air Act mandates the EPA to set emissions standards for motor vehicles if pollutants are found to endanger public health or welfare. The 2009 Endangerment Finding therefore obligated the EPA to regulate emissions from new motor vehicles, ostensibly to reduce or eliminate climate- related harms to the U.S. public.

Two questions that naturally arise are: (1) How large a reduction in CO2 emissions would result from such regulation? and (2) What would be the climate impact of such regulation?

The first question can be addressed by comparing U.S. vehicle-based CO2 emissions to the global total. The second question can be addressed by using the fact that the reduction in global warming would be, according to the models relied upon by the EPA, proportional to the reduction in global emissions, keeping in mind that the change in the CO2 content of the atmosphere in any given year is the result of total global CO2 emissions, not just U.S. emissions.

In 2022, the emissions from U.S. cars and light duty trucks totaled 1.05 billion metric tons of carbon dioxide (GtCO2, EPA 2024). Meanwhile global CO2 emissions from energy use totaled 34.6 GtCO2 (Energy Institute 2024). Hence U.S. cars and light trucks account for only 3.0 percent of global energy-related CO2 emissions. To a first approximation we can say that even eliminating all U.S. vehicle-based emissions would retard the accumulation of CO2 in the atmosphere by a year or two over a century.

It would also reduce the overall warming trend by at most about 3 percent. For the period 1979-2023, which has the most extensive global coverage of a variety of weather data types, warming trends are determined to a precision of about ±15 percent, so the impact of reducing the rate of global warming by eliminating U.S. vehicle CO2 emissions would be far below the limits of measurability. Given that global- average temperature is the most direct climate change metric, impacts on any secondary climate metrics (e.g. severe weather, floods, drought, etc.) from reducing U.S. vehicle CO2 emissions would be even less measurable.

Consequently, in contrast to the case of local air contaminants like particulates and ozone, even the most aggressive regulatory actions on GHG emissions from U.S. vehicles cannot be expected to remediate alleged climate dangers to the U.S. public on any measurable scale.

These authors cite to Ciais, P., C. Sabine, G. Bala, L. Bopp, V. Brovkin,et al. (2013): Carbon and Other Biogeochemical Cycles. In: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, et al. (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.

EPA (2024) Fast Facts: U.S. Transportation Sector Greenhouse Gas Emissions 1990-2022. Available online at https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P101AKR0.pdf.

Energy Institute (2024) Statistical Review of World Energy. Available online at https://www.energyinst.org/statistical-review.

The Supreme Court explained in *Michigan* that "agency action is lawful only if it rests `on a consideration of the relevant factors,'" 576 U.S. at 750 (quoting *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co*., 463 U. S. 29, 43 (1983), including "at least some attention to cost," *id.* at 752. *Michigan* requires the Agency to engage in "reasoned decisionmaking" which includes the consideration of all relevant factors which includes, *inter alia*, considering costs at the outset of the regulatory process, i.e., in deciding whether to regulate. The above therefore should have been taken into account when the 2009 Endangerment Finding intentionally triggered a duty to regulate by invoking CAA section 202(a) authority.

Michigan addressed regulation of air pollution from stationary sources where "regulation is appropriate and necessary," under a provision of the Clean Air Act that does *not* expressly cite to consideration of costs, unlike Section 202(a), the mobile source provision specifically addressed in the Agency's reconsideration.[4] As such, from *Michigan* we know that whether in imposing CAA regulation of mobile or stationary sources, it is not only not rational but is legally "(in)appropriate" to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits. The Endangerment Finding itself intentionally triggered all manner of costly regulations in the name of "climate" that do not offer detectable climate impacts (let alone benefit), and as such the Agency is also correct that (given, *inter alia*, *Michigan*) EPA acted improperly in severing its standard-setting authority (and restrictions thereon) from its Endangerment Finding process; this did improperly shape the Agency's Endangerment Finding analysis, and all subsequent standards prescribed as a result.

It is inconceivable that a regulation with no anticipated, detectable let alone appreciable impact, let alone benefit, survives the Clean Air Act's standard affirmed in *Michigan*.

Further, under *Michigan*, *Whitman* provides no safe harbor for "climate" regulations carrying great cost and little to no demonstrable climate impact (let alone benefit), which regulation includes and indeed began with the Endangerment Finding.

The Endangerment Finding, like its spawn, is imprudent *and* unlawful.

Lomborg, Bjorn (2016) "Impact of Current Climate Proposals" Global Policy 7(1) 109—118. Available at http://onlinelibrary.wiley.com/doi/10.1111/1758-5899.12295/full.

Wigley, T.M.L. (1998). "The Kyoto Protocol: CO2, CH4 and climate implications." Geophysical Research Letters 25(13), 2285-2288.

[4] The Agency is correct that in 2009 the Administrator erred in its analogy to the Supreme Court's decision (in re: the NAAQS program) in *Whitman v. American Trucking Assns., Inc*., 531 U. S. 457 (2001) as a way to avoid considering costs in the Endangerment Finding. *Massachusetts v. EPA*, 549 U.S. 497, 127 S Ct. 1438 (2007) must be read together with *Michigan,* and the language of CAA section 202(a)(1) [NB: and other CAA authorities] must be read in context to "produc[e] a substantive effect that is compatible with the rest of the law." *UARG*, 573 U.S. at 321 (quoting *United Sav. Ass'n of Tex.* v. *Timbers of Inwood Forest Assocs.,* 484 U.S. 365, 371 (1988)).

COMMENT 2: *Records suggest EPA's Endangerment Finding was unlawfully predetermined.*

Reviewing the Agency's internal record is a responsible step in reconsidering any prior action. Emails and privilege logs obtained in Freedom of Information Act (FOIA) litigation with EPA suggest the need for, and at minimum provide detailed places to begin, an Agency inquiry into whether its 2009 "Endangerment Finding" was impermissibly the product of unalterably closed minds. Specifically, a recanvassing of emails and logs produced in the infamous "Richard Windsor" FOIA lawsuit brought by the Competitive Enterprise Institute (CEI) against the Agency (*Competitive Enterprise Institute v. EPA* (DDC), Case No. 1:12-cv-01617 (JEB)), supports the conclusion that the 2009 regulatory "finding" that greenhouse gases endanger human health and welfare was the product of an illusory notice-and-comment process, and the agency predetermined its outcome because the relevant decisionmakers had unalterably closed minds.

That is, there is a sound basis for believing there was no realistic chance the process would achieve any other outcome, in violation of the Administrative Procedure Act.

The productions are often redacted in key parts, and the logs are only of a random sampling of 5% of the responsive records. Yet even this strongly suggests an improper proceeding. Agency should examine key records identified, below, but in unredacted form, and follow the evidence where that leads.

Further, the emails and logs raise questions about what EPA told the Office of Inspector General about the origins and timeline of the Endangerment Finding, when that Office's inquiry concluded the Endangerment Finding failed certain procedural requirements.[5]

The relevant timeline of Agency actions gives ample reason to believe unalterably closed minds generated the Endangerment finding, and suggests avenues for further inquiry. To protect the integrity of the rulemaking process, any reconsideration should also consider *what the Agency's internal discussions reveal* about the original propriety of this action in this respect.

Endangerment Finding Timeline

10.20.99 International Center for Technology Assessment submits petition to EPA seeking regulation of GHGs under § 202(a) of the CAA. This was denied in Sept. 2003, and then winded its way through DC Circuit litigation, where that court upheld the denial.

4.02.07 SCOTUS holds 5-4 in *Massachusetts v. EPA* that the CAA definition of "air pollutant" contemplates GHGs, and that the Administrator must determine whether emissions of greenhouse gases from new motor vehicles cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare, or whether the science is too

[5] U.S. EPA Office of Inspector General, *Procedural Review of EPA's Greenhouse Gases Endangerment Finding Data Quality Processes,* Sept. 26, 2011, https://www.epa.gov/sites/default/files/2015-10/documents/20110926-11-p-0702.pdf.

uncertain to make that decision. It did not order EPA to regulate GHGs, but to set forth a reasoned basis for doing so or not doing so.

12.18.08 EPA Administrator Johnson finds no endangerment, focusing specifically on stationary source permitting requirements, as set forth in the 19-page "Johnson memo".

1.21.09 Obama administration takes office at noon.

1.29.09 Principal advisor to the Administrator on legislative climate issues and former green-group (NRDC) lawyer, David McIntosh, reports to the Administrator Lisa Jackson (under her false-identity email account in the name of "Richard Windsor") and Lisa Heinzerling[6] about the second of two scheduled meetings with [REDACTED] climate modelers. [REDACTED]."

1.30.09 Scheduled "Briefing on the response to the Endangerment issue from *Mass. v EPA*"

2.08.09 Lisa Heinzerling sends "Richard Windsor" a "power plants memo", withheld in full (withheld in full)("WIF")

2.09.09 Jackson, McIntosh call with White House climate advisor "Carol Browner to discuss Coal Plants"

2.16.09 Emails, heavily redacted, discuss how much and what to say to NYT's Broder in interview the next day. Redactions include discussion of endangerment. State, re that interview: "SUBJECT: Handshake meeting; **Opportunity to outline agenda; endangerment**"

2.16.09 Jackson writes to Heinzerling, Subject: Good news re: Johnson memo, "The Sierra Club and other petitioners who have challenged the Johnson memo on PSD will NOT be asking the court to stay the memo tomorrow. [REDACTED (two lines)]. Have a good night."

Heinzerling responds, "Wow. How did you pull THAT off?"

That seems a very good question. EPA possesses the answer.

2.18.09 NYT's Broder publishes story "EPA to regulate Greenhouse gases". Story quotes Jackson saying mind not made up but *Mass. v EPA* anniversary was coming up, which she calls "momentous," saying "We have to lay out a road map."

EPA redacted several emails, shielding discussion of same.

[6] Ms. Heinzerling, who authored Massachusetts et al.'s brief in the *Massachusetts v. EPA* case, was brought in to the administration immediately and set to work on this matter for the first approximately seven months as "Administrator Jackson's chief advisor on climate matters" (apparently until "reinforcements have arrived" https://archive.epa.gov/publicinvolvement/web/html/epaappointmentactivities.html.

2.22.09 Vaughn index shows several email discussions of Endangerment, between Administrator and Heinzerling, WIF, as was email with same and public affairs chief discussing when and how to tell public about the Endangerment Finding

2.23.09 Email from Bob Sussman to Windsor, Heinzerling, McIntosh, Subject: "OMB/Endangerment Finding", refers to recommendation for "one important item" from Michael Fitzpatrick of OIRA (OMB) for proceeding with the Endangerment Finding

Heinzerling responds, "*We're planning on doing this*."

See 2.26.09 email to White House on this same topic. This shows the Endangerment Finding was well in the works one month into office.

2.26.09 Email from Heinzerling to "Windsor", McIntosh, states that an Endangerment Finding will be made, even though it was at the time purportedly just something under consideration, *and* that Agency can proceed w tailpipe regs (subject of *Mass. V. EPA*) while EF is underway

2.26.09 EPA tells Heather Zichal, deputy WH coordinator for climate and energy policy, that the Endangerment Finding will be made, they will get OMB to expedite its review and gives the timeline for going final

3.05.09 Vaughn index shows email discussions of Endangerment, between Administrator and Heinzerling, WIF

3.10.09 Vaughn index shows email discussions of Endangerment, between Administrator and Heinzerling, WIF

3.12.09 Al McGartland, director of EPA's National Center for Environmental Economics, emails (soon-to-be) whistleblower Alan Carlin, "In light of the tight schedule and the turn of events, please do not have any direct communication with anyone outside of NCEE **on endangerment.**"

3.13.09 Vaughn index shows string of emails about drafting memo to POTUS re EF, Heinzerling and Windsor, Attachment: "Presidential Decision Memo endangerment LH 3-15 – redline.doc". Other entries show this thread continues on 3.16.09 and 3.22.09, including David McIntosh

3.16.09 Subject: Comments on the Endangerment TSD, copying more Agency officials, Carlin presses for inclusion of what are later described as "not helpful" comments contradicting what the administration has decided to do

3.17.09 More WIF email between Windsor and Heinzerling, "Endangerment"

3.17.09 McGartland emails Carlin, Subject: endangerment comments??? stating he did not forward Carlin's input and stated, *inter alia*, "**The administrator and the administration**

has decided to move forward on endangerment, and your comments do not help the legal of policy case for this decision."

3.20.09 More WIF email between Windsor and Heinzerling, "Endangerment"

3.22.09 WIF emails between Windsor, Heinzerling, PR chief, "Endangerment"

3.202-23.09 WIF email between Windsor, Heinzerling, PR chief, on the matter of public hearings on "the endangerment finding", which the records states had not yet been made

4.07.09 Lisa Jackson ("Richard Windsor") trying to get time w David Axelrod to message EF [Endangerment Finding]

4.24.09 EPA proposes the Endangerment Finding

6.09 Then came the whistleblowing by EPA scientist Alan Carlin. 6.24.09 email regarding this same topic, and having not been presented with the questions about Carlin allegations "we had been worried about."

12.03.09 Vaughn index shows East Anglia (i.e., ClimateGate) Talking Points

12.05.09 Memo, redacted (first in full, then merely heavily), Tough Qs and As, "**Issues raised regarding the Climate Research Unit (CRU) University of East Anglia**."

Fully redacts "**Relevance to EPA and the Endangerment Finding**."

12.15.09 EPA publishes "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act."

9.26.11 OIG report requested by Ranking EPW Member Sen. James Inhofe (R-OK), "Procedural Review of EPA 's Greenhouse Gases Endangerment Finding Data Quality Processes"—which found, among other procedural deficiencies, that the EF "should have been peer reviewed as" required by implementing guidance for the Information Quality Act but was not—states, *inter alia*, in its discussion "OAR Did Not Follow Some Steps in the Action Development Process":

"EPA initiated a formal action development process for the stand-alone greenhouse gases endangerment finding in early March 2009," and "OAR [Office of Air and Radiation] began the action development process for the stand-alone endangerment finding in March 2009…", citing no other point of note in the history of considering an EF between March 2009 and July 2008;

and

"in the endangerment finding EPA described the April 2009 TSD as the "underlying scientific and technical basis" for the Administrator's proposed findings."

CONCLUSION

Until the record reflects the reality of observations compared with past pronouncements, including particularly the disparity between what was assumed in 2009 and what has been observed since, and until the Agency adjusts its rules to reflect Supreme Court precedent in the interim, policies and jurisprudence will continue to hinge on the unlawful Endangerment Finding, and government will continue to harm those interests it was established to protect. To the extent the EPA has any doubts, it should examine its own Agency records as set forth above, and investigate whether the Endangerment Finding was additionally adopted by those with an unalterably closed mind or otherwise improperly.