Comments on EPA's Supplemental Proposal, Rescission of the Greenhouse Gas Findings for Fossil Fuel-Fired Power Plants and Repeal of Regulations for Power Plant Greenhouse Gas Emissions Under Clean Air Act Section 111, 40 CFR Part 60 [EPA-HQ-OAR-2025-0124; FRL-12674.1-01-OAR] RIN 2060-AX00

Government Accountability & Oversight
Contact: info@govoversight.org

October 29, 2026

SUMMARY OF COMMENTS:

COMMENT 1 (C-3, C-4, C-5): *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 Supplemental Proposal recognizes in using such models "without endorsing the underlying assumptions reflected in these commonly used models," 91 FR 59002, 59036 (Sept. 17, 2026)).*

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 and, in reliance on it, the Administrator's 2015 findings and determinations subjecting power plants to GHG regulation under CAA section 111 ("2015 Findings"), which have led to profound regulatory and other economic costs, distortions and dislocation of resources. It is therefore difficult to overstate the importance of this Supplemental Proposal 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, which the Agency has since rescinded. The 2015 Findings the Agency now proposes to rescind relied on it. See 91 FR 7686 (Feb. 18, 2026); 91 FR at 59005.*

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, and the 2015 Findings extending it to power plants, represent 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).

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 Supplemental Notice of Proposed Rulemaking, "Rescission of the Greenhouse Gas Findings for Fossil Fuel-Fired Power Plants and Repeal of Regulations for Power Plant Greenhouse Gas Emissions Under Clean Air Act Section 111," 91 FR 59002 (Sept. 17, 2026), https://www.federalregister.gov/documents/2026/09/17/2026-19072/rescission-of-the-greenhouse-gas-findings-for-fossil-fuel-fired-power-plants-and-repeal-of ("Supplemental Proposal").

In part by this Supplemental Proposal, the EPA is undoing years of policies that targeted ideologically disfavored products, activities, and industries to force reductions in greenhouse gas (GHG) emissions, due to an alleged "climate crisis." EPA has done this both directly, as in the GHG standard at issue here, and pretextually, i.e., using authorities granted for one purpose for another purpose entirely (particulate matter, coal ash storage, wastewater effluent, etc.). This was sometimes openly admitted by senior officials in their public statements, if denied in the rulemakings themselves. All of these actions were grounded directly or indirectly in the Agency's 2009 Endangerment Finding.[1] All of these actions represent 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, continuing with this Supplemental Proposal.

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."[2] 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. Rescission is the only rational approach to the 2015 Findings, which, like the 2009

[1] In the Supplemental Proposal, the Agency proposes that, "because the 2015 Findings relied on the interpretations in and approach of the 2009 Endangerment Finding rather than independently interpreting and applying CAA section 111(b)(1)(A), the rescission of the 2009 Endangerment Finding in February 2026 abrogates the legal foundation of the 2015 Findings." 91 FR at 59030.

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

Endangerment Finding on which they relied and other subsequent regulations that flowed therefrom[3], are not permissible as affirmed by subsequent U.S. Supreme Court jurisprudence. This precedent 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.

Unlike other policy areas (defense, education, etc.), EPA "climate" regulation does not promise to impact the climate. That is, even regulations expressly dedicated to reducing GHGs are arguably pretextual; regardless, they are futile, and therefore at best they represent mere, impermissible gestures. This is because even under computer-modeled scenarios which tendentiously boost GHG warming with engineered-in feedbacks, U.S. policy actions are expected to have undetectably small direct impacts on the global climate; in these scenarios 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.[4] The Supplemental Proposal's own

---

[3] 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 immediate-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, s 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/.

[4] 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. This is why the 2009 Endangerment Finding obligated the EPA to regulate emissions from new motor vehicles, ostensibly to reduce or eliminate climate- related harms to the U.S. public. This is unsupportable, just as it is for power plant emissions. See *infra*.

modeling confirms the same is true of power plants. Eliminating all U.S. power plant CO2 emissions would reduce projected global mean surface temperature (GMST) by an estimated 0.035 °C by 2100, which the Agency finds is "below the range of measurability for GMST." 91 FR at 59040.

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,

---

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.
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.

and again when the 2015 Findings relied on it to subject power plants to regulation under CAA section 111(b)(1)(A).

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 111, the stationary source provision specifically addressed in the Supplemental Proposal, which expressly requires "taking into account the cost of achieving such reduction." 42 U.S.C. § 7411(a)(1).[5]

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 (see FN 1, *supra*), and in carrying that same severance into the 2015 Findings, see 91 FR at 59031, 59041; this did improperly shape the Agency's Endangerment Finding analysis, the 2015 Findings, 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 v. American Trucking Assns., Inc*., 531 U. S. 457 (2001) 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 and extends to the 2015 Findings.

The 2015 Findings and the power plant GHG standards, like the Endangerment Finding that spawned it[6], is imprudent *and* unlawful.

---

[5] The Agency was correct, in proposing to rescind the Endangerment Finding, 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)).

[6] Because the Supplemental Proposal acknowledges that the 2015 Findings relied on the interpretations in and approach of the 2009 Endangerment Finding rather than independently interpreting and applying CAA section 111(b)(1)(A), the manner in which that foundation was laid is therefore relevant to the Supplemental Proposal. Therefore we refer the Agency to, and incorporate by reference here, GAO's comment detailing the 2009 EF's predetermination, Gov't Accountability & Oversight, *Comments on EPA's Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards*, Docket No. EPA-HQ-OAR-2025-0194; FRL-12715-01-OAR; RIN 2060-AW71 (Sept. 19, 2025), https://govoversight.org/wp-content/uploads/2025/09/9.19.25-GAO-Comments-on-EPA-Rescission-of-Endangerment-Finding.pdf. ID: EPA-HQ-OAR-2025-0194-0093.

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 reflects Supreme Court precedent by rescinding this standard and the entire, *de facto* and *de jure* intertwined "suite of regulations" seeking to compel GHG reductions outside of the Agency's scope of authority, the 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 in the GAO comments on the Endangerment Finding and comments and briefs on "suite of regulation" rules cited, above.