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U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
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Re: Comments on Environmental Protection Agency 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"[1]

Docket ID No. EPA-HQ-OAR-2025-0124-2920

Business Roundtable urges the Environmental Protection Agency (EPA), if it finalizes the proposed rescission and repeal, to state expressly, as it has in the preamble to the proposed rule, that the Agency retains authority under section 111 of the Clean Air Act (CAA) to regulate greenhouse gas (GHG) emissions when the statutory prerequisites are satisfied. The final rule should also explain that Congress's delegation to EPA continues to displace state regulation and federal and state common-law claims concerning emissions from source categories covered by section 111 of the CAA. A clear statement of continuing federal authority in the final rule would promote the regulatory certainty, predictability and durability needed for long-term investment while remaining consistent with the CAA's clear text, Congress's intent and Supreme Court precedent.

Introduction

Business Roundtable appreciates the opportunity to provide comments on EPA's supplemental notice of proposed rulemaking to rescind the GHG findings and associated fossil fuel-fired power plant GHG emissions regulations under section 111 of the CAA.

Business Roundtable remains concerned about the growing risks posed by global climate change, including significant economic, physical and public-health risks. In response, Business Roundtable member companies are developing and implementing ambitious emissions-reduction plans and exporting innovative technologies that will help reduce emissions in the United States and globally while spurring innovation, manufacturing and economic growth.

Although our concerns about global climate change remain, we welcome the Administration's effort to promote greater regulatory certainty and durability by revisiting regulations and ensuring that they rest on stable legal foundations. Businesses require such certainty to deploy capital efficiently. Regulatory reversals can place tens of billions of dollars in compliance

[1] 91 Fed. Reg. 59002 (Sept. 17, 2026).

investments at risk, impairing economic growth and long-term job creation. The uncertainty is compounded when companies also face state and federal common-law climate claims and a patchwork of differing state climate regulations.

Business Roundtable has not challenged EPA's authority to regulate GHGs under the CAA, particularly considering Congress's judgment that the federal government is responsible for determining whether and how to regulate GHG emissions. We have, however, expressed concerns about the costs, compliance deadlines and technology pathways selected in particular rulemakings. EPA retains legal authority to regulate GHGs under the CAA, but Supreme Court precedent requires the Agency to make the requisite statutory findings and tailor its regulations carefully to the authority Congress granted. We therefore urge EPA to acknowledge clearly in any final rule that it continues to possess authority to regulate GHGs under the CAA when the requisite findings can be made.

Predictability and Durability Should Inform EPA's Regulatory Approach (C-2)

EPA asserts that:

> If finalized as proposed, the proposed repeals … would not impact the CAA's preemptive effect with respect to the regulation of interstate emissions. The CAA would continue to displace any Federal common-law claims that might otherwise be available to those seeking to regulate GHG emissions from power plants. In CAA section 111, Congress adopted a standard for when such emissions rise to the level of regulatory concern and "delegated to EPA the decision whether and how to regulate" such emissions.[2]

EPA further maintains:

> [T]he proposed repeals would not impact preemption under the CAA and other applicable constraints on State regulation of State common-law claims, statutes or regulations that seek to regulate out-of-state GHG emissions. (citations omitted).[3]
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> Under the approach proposed in this rulemaking, the EPA would affirm its authority under CAA section 111 to list and regulate source categories that, in the Administrator's judgment, cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Adopting the approach proposed in this rulemaking would not disturb our authority to identify and regulate circumstances where emissions, including GHG emissions, satisfy the statutory threshold for listing and regulation.[4]

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[2] *Id*. at 59043 (quoting *Am. Elec. Power Co v. Connecticut*, 564 U.S. 410, 426 (2011)).

[3] *Id.*

[4] *Id.*

If EPA rescinds the GHG findings for fossil fuel-fired power plants and repeals the regulations based on those findings, we strongly urge the Agency to confirm in the final rule, as it has proposed to do in the supplemental rulemaking, that it retains authority under the CAA to regulate GHG emissions when the statutory requirements are satisfied. That position is consistent with longstanding Supreme Court precedent. As EPA has noted, the Supreme Court held in *American Electric Power Co. v. Connecticut*[5] that Congress delegated to EPA the authority to regulate GHG emissions from power plants under CAA section 111 and that this delegation displaces federal common-law claims seeking abatement or emission standards. The Court explained that "[t]he test for whether congressional legislation excludes the declaration of federal common law is simply whether the statute 'speak[s] directly to [the] question' at issue." (citations omitted)[6] It further held that "*Massachusetts* made plain that emissions of carbon dioxide qualify as air pollution subject to regulation under the Act (citation omitted). And we think it equally plain that the Act 'speak[s] directly' to emissions of carbon dioxide from the defendants' plants."[7] The Court emphasized that "[t]he critical point is that Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from powerplants; the delegation is what displaces federal common law. Indeed, were EPA to decline to regulate carbon-dioxide emissions altogether at the conclusion of its ongoing … rulemaking, the federal courts would have no warrant to employ the federal common law of nuisance to upset the Agency's expert determination."[8]

In addition to potential federal common-law claims, many companies face state and private lawsuits alleging contributions to global climate change. Even when such suits lack merit, litigation can be costly, distracting and unpredictable regardless of the outcome, making investment decisions more difficult. State and local governments may also attempt to fill a perceived regulatory gap if EPA determines that it lacks authority to regulate GHG emissions under section 111 of the CAA. Compliance with multiple and potentially conflicting state regimes would increase costs, complicate investment decisions, create regulatory uncertainty and make efficient emissions reductions more difficult. In addition, if EPA withdraws entirely from GHG regulation, foreign-market access may be restricted through international trade and climate measures.

Regulatory uncertainty has real consequences, not only for emission reduction efforts, but also for the regulated community which has invested many tens of billions of dollars to align its goals with scientific evidence and comply with ever-changing climate regulations. If EPA decides to rescind the GHG findings and the associated regulations predicated on these findings for fossil fuel-fired power plants under section 111 of the CAA, EPA should make clear that it retains the authority to promulgate workable, predictable and durable GHG regulations that

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[5] 564 U.S. 410 (2011).
[6] *Id.* at 424.
[7] *Id.*
[8] *Id.* at 426.

faithfully adhere to clear Supreme Court precedent, and which are likely to survive judicial scrutiny and endure beyond the current Administration.

Clean Air Act Section 111 is Not Well Designed to Regulate GHGs, but EPA Retains the Necessary Authority to Regulate GHGs (C-2)

If EPA finalizes the proposed rescissions, we believe relevant case law requires EPA to acknowledge continued regulatory jurisdiction over GHG emissions under the CAA and the preemptive effect this authority would have on state regulation and common-law claims, as discussed in the supplemental notice of proposed rulemaking.[9]

As the proposed rule notes, nearly 17 years have passed since the original Endangerment Finding was made and since that time, EPA repeatedly has struggled to develop GHG regulatory approaches for stationary sources that fit within the CAA's statutory framework. Importantly, those unsuccessful efforts do not establish that the CAA cannot regulate GHGs. Instead, they demonstrate the limits of the authority Congress has delegated to the Agency when it chooses to do so.

We agree with EPA's interpretations of *Massachusetts v. EPA*,[10] *UARG v. EPA*,[11] *Loper Bright Enterprises v. Raimondo*[12] and *West Virginia v. EPA*.[13] *Massachusetts* held that GHGs fall within the CAA section 302(g) definition of "air pollutant," permitting EPA to regulate GHG emissions after making the factual findings required by the Act.

UARG, *Loper Bright* and *West Virginia* establish limits on agency interpretations of statutory authority. At the same time, *UARG* and *West Virginia* identify a path for GHG regulation that adheres closely to the best reading of the CAA and does not rely on authority Congress did not clearly grant. *UARG* authorized EPA to regulate certain sources of GHG emissions under the CAA while rejecting the Agency's broader jurisdictional claims. *West Virginia* rejected EPA's attempt to restructure the power sector through generation shifting, but neither decision held that EPA lacks authority under the CAA to regulate GHGs. Rather, both decisions rejected claims of authority insufficiently tied to the CAA's statutory provisions.

We therefore believe EPA should acknowledge its continuing federal regulatory authority over GHGs under the CAA and the resulting displacement or preemptive effect, as applicable, on state regulation and common-law tort claims. Section 111 delegates to the EPA Administrator authority to regulate a category of stationary sources "if in his judgment it causes, or

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[9] 91 Fed. Reg. at 59043-44.
[10] 549 U.S. 497 (2007).
[11] 573 U.S. 302 (2014).
[12] 603 U.S. 369 (2024).
[13] 597 U.S., 697 (2022).

contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." As *Massachusetts* confirms, this authority can encompass GHGs.

Business Roundtable remains committed to working with the Administration to develop a regulatory approach that provides the certainty, predictability and durability American businesses need to invest, compete, reduce emissions efficiently and support continued economic growth.

For further information about these comments, please contact:

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