

September 22, 2025

**Re: Comments on Environmental Protection Agency Notice of Proposed Rulemaking
“Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards”¹**

Docket ID No: EPA-HQ-OAR-2025-0194

Introduction

Business Roundtable appreciates the opportunity to provide comments on the Environmental Protection Agency’s (EPA) proposal to rescind the 2009 Endangerment Finding under section 202(a) of the Clean Air Act (CAA). The proposal would also rescind all light-duty, medium-duty and heavy-duty vehicle and engine greenhouse gas (GHG) emissions standards that were promulgated in reliance on that finding.

Business Roundtable welcomes the Administration’s commitment to addressing burdensome regulations. While our organization has never challenged EPA’s authority to regulate GHGs under the CAA, we have expressed concerns with the cost, compliance deadlines or technology pathways chosen in various rulemakings.

Business Roundtable remains concerned by the growing risks from global climate change, including significant economic risks (e.g., technological and market shifts and regulatory and policy risks) and physical and public health risks. Business Roundtable member companies are leading by example, developing and deploying ambitious emissions reduction plans, and exporting innovative technologies that will help lower emissions in the United States and globally, while simultaneously spurring innovation, manufacturing and economic growth. Business Roundtable looks forward to helping advance policies that leverage U.S. leadership, competitiveness and innovation to mitigate the impacts of global climate change while growing our economy.

Workability, Predictability and Durability Should Inform EPA’s Regulatory Approach (C-10)

EPA takes the position in its proposal that the “proposed repeal [of EPA’s motor vehicle GHG emissions standards] ... would not impact Federal preemption of emission standards for new motor vehicle and engine emission standards” and that “new motor vehicles and engines currently subject to GHG emission standards would remain subject to Title II of the CAA.” As a result, the CAA “would continue to preempt ‘any’ State or local ‘standard relating to the control of emissions.’”² EPA additionally asserts that the CAA would preempt Federal common-law

¹ 90 Fed. Reg. 36,288 (Aug. 1, 2025).

² *Id.* at 36,315.

claims related to GHG emissions because “‘Congress delegated to EPA the decision whether and how to regulate such emissions.’ *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 426 (2011).”³ Moreover, EPA notes that the proposed rule would not prohibit EPA from regulating GHGs from new motor vehicles and engines if the Administrator later determines that one or more of the six GHGs meet the CAA section 202(a) requirements for regulation.⁴

If EPA decides to rescind the Endangerment Finding for Section 202, we urge the Agency to confirm it retains authority under the CAA to regulate GHG emissions to the extent appropriate under the statute. Such a position is consistent with long-standing Supreme Court precedent. Specifically, the Supreme Court made clear that EPA’s authority to regulate GHG emissions from power plants under CAA section 111 displaces any federal common law right to seek abatement of GHG emissions from power plants regardless of whether EPA exercised its regulatory authority to set standards governing emissions.⁵

Many companies are already facing state and private lawsuits related to alleged contributions to global climate change. Even when such suits lack merit, the fact remains that regardless of the outcome of litigation, it’s often expensive, distracting and unpredictable—making investment decisions difficult. In addition, state and local governments are likely to attempt to fill any regulatory gap if EPA were to determine that it lacks authority to regulate GHG emissions under section 202 of the CAA. Attempting to comply with multiple, likely conflicting, regulations among the states will drive up compliance costs for companies, create obstacles for investment decisions, lead to regulatory uncertainty and make efficient reduction of emissions more difficult. Additionally, access to foreign markets are more likely to be restricted or restrained through the implementation of international trade and climate laws if EPA completely abandons GHG regulation.

Regulatory uncertainty has real consequences, not only for emission reduction efforts, but also for the regulated community that has invested many tens of billions of dollars to align their goals with scientific evidence and meet ever-changing climate regulations. If EPA decides to rescind the Endangerment Finding and the mobile source regulations predicated on the Finding, EPA should make clear that it retains the authority to promulgate workable, predictable, and

³ *Id.*

⁴ *Id.*

⁵ *Am. Elec. Power Co.*, 564 U.S. at 425-426. (“The plaintiffs argue, as the Second Circuit held, that federal common law is not displaced until EPA actually exercises its regulatory authority.... We disagree.... The critical point is that Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from power plants; 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 §7411 rulemaking, the federal courts would have no warrant to employ the federal common law of nuisance to upset the agency’s expert determination.”)

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

State, municipal and private claims against companies for alleged damage due to global climate change, and state and local government attempts to fill regulatory gaps, would continue to be preempted by federal law even if EPA were to conclude that GHG emissions do not satisfy the CAA's requirements for an endangerment finding under section 202. If promulgated, a final rule should help dispel legal and regulatory uncertainty around questions of Federal and state common law by underscoring that EPA retains authority to regulate greenhouse gases. We believe the best reading of relevant case law requires this.

The Clean Air Act is Not Well Designed to Regulate GHGs but EPA Retains the Necessary Authority (C-1), (C-10)

EPA has requested comment “on the continued preemptive effect of the CAA in the event that the EPA finalizes the proposed rescission or otherwise concludes that it lacks authority to regulate GHG emissions under CAA section 202(a) or any other specific regulatory provision of the CAA (C-10).”⁶ 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 proposed rule.⁷

As the proposed rule notes, section 202(a) of the CAA has remained relatively unchanged since it was first enacted in 1965, prior to the enactment of the modern Clean Air Act that was signed into law in 1970 by President Nixon.⁸ And while Congress has enacted discrete programs referencing GHGs, including renewable fuels standards for mobile sources and a series of narrowly tailored provisions contained in the Inflation Reduction Act⁹, it has not enacted a comprehensive GHG emissions reduction program, either for mobile or stationary sources. As a result, as noted by the proposed rule, almost 16 years have passed since the Endangerment Finding was made, and EPA repeatedly has found itself stymied in its efforts to craft GHG regulatory approaches that can fit within the CAA's statutory framework. A key reason for this is that EPA has repeatedly promulgated expansive regulations aimed at re-ordering significant portions of our economy without additional Congressional authorization or direction. However, these past failures to establish legally permissive GHG rules do not necessarily indicate that the CAA cannot be used to regulate GHGs but instead underscore the limitations of current authorities provided by Congress.¹⁰ As a result, Business Roundtable recommends that EPA be

⁶ 90 Fed. Reg. at 36,325 (C-10). *See also* 90 Fed. Reg. at 36,314-15, 36,297.

⁷ *Id.* at 36,314-15.

⁸ *Id.* at 36,293, 36,299.

⁹ *Id.* at 36,306.

¹⁰ Such limitations are based, in part, upon the lack of available, affordable technologies which many Business Roundtable members are developing and deploying.

precise “in the event that the EPA finalizes the proposed rescission or otherwise concludes that it lacks authority to regulate GHG emissions under CAA section 202 (a)”¹¹ to clarify that in such a case EPA would only be concluding that it lacks authority to regulate unless the statutory thresholds are satisfied, and not that it lacks regulatory authority if such thresholds *are satisfied*.

We agree with EPA’s interpretations of the *Massachusetts v. EPA*¹², *UARG v. EPA*¹³, *Loper Bright Enterprises v. Raimondo*,¹⁴ and *West Virginia v. EPA*¹⁵ cases. *Massachusetts* determined that GHGs are covered by the CAA’s section 302(g) definition of “air pollutant,” and that therefore the EPA can impose regulations on GHG emissions once the EPA makes the requisite factual findings under the CAA. *UARG*, *Loper Bright*, and *West Virginia* establish clear limits on agency discretion to interpret ambiguous statutes. Paradoxically, the *UARG*, *Loper Bright*, and *West Virginia* cases also illuminate a pathway for regulation of GHGs under the CAA, a pathway that hews closely to the best reading of the CAA without asserting claims of authority not clearly granted. Neither *UARG*, which explicitly authorized EPA to regulate certain sources under the CAA while striking down EPA’s expansive claim of jurisdiction over other sources, nor *West Virginia*, which disallowed EPA’s attempt to transform the power sector by requiring fuel switching and CO₂ control measures, found that EPA lacked authority under the CAA to regulate GHGs. Instead, these decisions struck down expansive claims of authority—insufficiently tethered to the statutory provisions of the CAA. To give full meaning to all these decisions, we believe EPA is required to acknowledge continued regulatory authority over GHGs under the CAA, to the exclusion of state regulation and common-law tort claims. This is the case because EPA is authorized to regulate any air pollutant that, in the Administrator’s judgment, “cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare.”¹⁶ The Administrator’s judgment does not amend the statutory and regulatory authorities granted to EPA by Congress. Accordingly, we encourage EPA to acknowledge its continuing jurisdiction even where the Administrator judges it not appropriate to exercise that jurisdiction. To do otherwise would be at variance with *Massachusetts*, *UARG*, and *West Virginia*.

While we acknowledge that EPA’s authority under CAA section 202(a) to regulate GHG emissions from motor vehicles and engines to address global climate change is constrained by a lack of clear Congressional authorization, we maintain that EPA will retain regulatory jurisdiction over GHGs under the CAA even if it rescinds the Endangerment Finding and the

¹¹ 90 Fed. Reg. at 36,325.

¹² 549 U.S. 497 (2007).

¹³ 573 U.S. 302 (2014).

¹⁴ 603 U.S. 369 (2024).

¹⁵ 597 U.S. 697 (2022).

¹⁶ CAA sec. 202(a)(a).

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associated mobile source GHG standards.

Business Roundtable remains committed to working with the Administration to provide the certainty and predictability that American businesses need to thrive and compete.

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