ZERO EMISSION TRANSPORTATION ASSOCIATION

September 22, 2025

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20004

Re: Industry Concerns about EPA's Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards (EPA-HQ-OAR-2025-0194)

Dear Administrator Zeldin,

We write to urge the Environmental Protection Agency (EPA) not to rescind the 2009 finding that greenhouse gas (GHG) emissions from motor vehicles may reasonably be anticipated to endanger public welfare. To that end, we submit the following comments on the proposal. As has long been recognized, EPA has authority under the Clean Air Act to regulate GHG emissions from motor vehicles, and there is no serious scientific disagreement about the fundamental premise that anthropogenic climate change is occurring and is causing present harms and about the range of future risks to human health associated with it if not mitigated. In light of this, the 2009 endangerment finding and its regulatory framework are appropriate and obligated under the Clean Air Act.

While individual companies and industry leaders may disagree on the scope and stringency of regulations promulgated under EPA's authority to regulate GHGs, there is broad agreement across the industries we represent that rescinding the finding itself would be disruptive to the stable regulatory environment on which durable economic growth depends and would undermine investments made in reliance on that framework. Most importantly, we wish to express our deep concern that such a dramatic shift would introduce significant risk and uncertainty for businesses at a critical moment for the U.S. economy.

By all measures, the U.S. manufacturing sector is in the midst of a massive wave of investment across the country. Manufacturing construction spending is near a historic peak, driven in large part by investments in new chip fabrication plants, battery and electric vehicle factories, and related supply chains. Manufacturing value added from this construction boom represents nearly 10% of GDP, and the facilities, once constructed, will employ hundreds of thousands of our fellow citizens working to make the United States globally competitive as a producer of advanced technologies for the future.[1,2] States and communities have actively recruited and welcomed these landmark investments and the economic opportunities they bring.

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[1] St. Louis Federal Reserve, Total Construction Spending: Manufacturing in the United States. https://fred.stlouisfed.org/series/TLMFGCONS (last updated Sept. 2, 2025).

[2] Atlas Public Policy, Tracking the State of U.S. EV Manufacturing (2025), https://atlaspolicy.com/wp-content/uploads/2025/01/Tracking-the-State-of-U.S.-EV-Manufacturing.pdf.

America's automotive industry is rising to the challenge presented by a rapidly evolving global marketplace. Now more than ever, manufacturers, suppliers, and related industries need a stable and durable regulatory framework within which to ensure the historic capital expenditures deployed across the country deliver their full impact on our nation's future economic and job growth, supply chain security, and global competitiveness. The automotive industry, like many others, has come to rely on EPA's use of its authority to promulgate greenhouse gas emission standards, recognizing that in setting emissions standards pursuant to the endangerment finding, the agency considers technological feasibility, cost effectiveness, safety factors, and product lead-time considerations of any proposed rules thereunder. While no regulation is ever perfect, the process provides fulsome opportunities for input from industry and other stakeholders and well-worn remedies for modifying rules to ensure they are consistent with Congressional intent.

There is broad agreement that it is in the national interest to attract investment into the United States, particularly in the manufacturing sector that has long been the engine of our world-leading economy. We must not take for granted, however, the degree to which dramatic changes to a regulatory framework that is broadly accepted and well-understood by the public, industry, and capital markets could shake investor confidence in our institutions' capabilities and willingness to provide a stable and predictable investment environment.

Similarly, businesses have made significant investments to comply with this framework. Removing the endangerment finding upsets years of investment and planning. Businesses have significant reliance interests that will be disrupted by revoking the finding, including the stability provided by federal authority over greenhouse gas regulation. For example, absent federal regulatory authority, businesses may be subjected to competing and inconsistent state law mandates and increased tort litigation over climate harms. Additionally, the United States would be an outlier in terms of regulating GHGs globally, introducing new risks and challenges for businesses that need consistency to operate and compete in international markets.

For these reasons, we respectfully urge EPA to consider a path forward that works within the framework put in place by the Clean Air Act, directly interpreted and clarified by the Supreme Court in *Massachusetts v. EPA* and judicially reviewed and upheld in several subsequent decisions over the last two decades.[3]

Sincerely,

Albert Gore
Executive Director

[3] *Massachusetts v. EPA*, 549 U.S. 497 (2007).

EPA should not finalize this proposal. EPA's new legal interpretation of its authority under the Clean Air Act (CAA) is incorrect. The Supreme Court held in *Massachusetts v. EPA*[1] that the CAA authorizes regulation of greenhouse gas (GHG) emissions from new motor vehicles, and EPA's proposal runs counter to this settled precedent in multiple respects. The Agency's alternative scientific rationale is equally flawed. In principal part, EPA relies on a draft Department of Energy Climate Working Group report that violates federal scientific integrity standards and lacks peer review. EPA is further wrong that no technology exists to address GHG pollution from motor vehicles. Small reductions in greenhouse gas emissions have a meaningful impact on climate change and its attendant harms to public health and welfare, and existing electric vehicle technology can effectively reduce emissions while providing cost savings to consumers. Further, the proposal ignores ZETA members' substantial reliance on the existing regulatory regime. The rescission would devastate industry, which has invested tens of billions of dollars in electric vehicle (EV) manufacturing, battery production, and charging infrastructure. EPA also failed to adequately analyze the proposal's broader consequences, including potential impacts on other GHG regulations across sectors and the risk of increasing common law climate litigation. Finally, the fact that EPA has seemingly pre-ordained the result of this rulemaking process and that it established an unreasonably short comment period further undermine the legitimacy of this rulemaking process.

I. EPA's Primary Interpretation of Its CAA Authority Is Incorrect.

In the proposal, EPA asserts that it does not have the statutory authority to regulate GHG emissions from new motor vehicles. That is incorrect. As has long been understood, and as the Supreme Court itself recognized in *Massachusetts v. EPA*,[2] the CAA authorizes EPA to regulate GHG emissions from new motor vehicles in the event that it forms a "judgment" that such emissions contribute to climate change.

EPA's arguments to the contrary are unpersuasive. *First*, contrary to the proposal, the statute does not limit EPA's regulatory purview to local or regional pollutants. *Second*, EPA fails to recognize that the CAA permits EPA to issue an endangerment finding first, and motor vehicle emission standards later, as EPA did in issuing the 2009 endangerment finding. *Third*, nothing in the statute requires EPA to myopically focus on emissions from new motor vehicles, without any consideration of emissions from other sources, as EPA now thinks it must. *Fourth*, EPA is wrong that its proposal is compelled by intervening case law on the major questions doctrine or *Chevron* deference. For those reasons, EPA lacks any statutory basis to reconsider the endangerment finding.

A. The CAA has long been understood to confer authority on EPA to regulate GHG emissions.

Section 202(a) of the CAA requires the EPA Administrator to "by regulation prescribe . . . standards applicable to the emission of any air pollutant from any class or classes

[1] 549 U.S. 497 (2007).

[2] *Id.*

of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."[3]

In *Massachusetts*, the Supreme Court directly interpreted this provision and rejected EPA's argument there that "carbon dioxide is not an 'air pollutant' within the meaning of [section 202(a)(1)]."[4] The Court had "little trouble concluding" that "§ 202(a)(1) of the Clean Air Act authorizes EPA to regulate greenhouse gas emissions from new motor vehicles in the event that it forms a 'judgment' that such emissions contribute to climate change."[5] Since *Massachusetts*'s express holding, EPA has consistently interpreted section 202(a)(1) to allow for regulation of GHG emissions from new motor vehicles and engines.[6] This interpretation has been judicially reviewed and upheld.[7] Further, the interpretation has been relied on by Congress, and reinforced by congressional action, including through the Inflation Reduction Act.[8] EPA's authority to regulate GHG emissions under the CAA has thus been stable for nearly 20 years, and has underpinned the promulgation of GHG emissions regulations for a variety of sectors including aerospace, oil and gas, power, and waste management.[9]

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[3] 42 U.S.C. § 7521(a).

[4] 549 U.S. at 528.

[5] *Id.*

[6] *See, e.g.*, Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 (Dec. 15, 2009); Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, 75 Fed. Reg. 25,324 (May 7, 2010); Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles, 76 Fed. Reg. 57,106 (Sept. 15, 2011); 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 77 Fed. Reg. 62,624 (Oct. 15, 2012); Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles-Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016); The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks, 85 Fed. Reg. 24,174 (Apr. 30, 2020); Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards, 86 Fed. Reg. 74,434 (Dec. 30, 2021); Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Action on Petitions, 87 Fed. Reg. 25,412 (Apr. 29, 2022); Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles, 89 Fed. Reg. 27,842 (Apr. 18, 2024); Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3, 89 Fed. Reg. 29,440 (Apr. 22, 2024).

[7] *See Coal. for Responsible Regul., Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012), *aff'd in part, rev'd in part on other grounds sub nom.*, *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302 (2014). *See also Util. Air Regul. Grp. v. EPA* (*UARG*), 573 U.S. 302, 310 (2014) ("In 2007, the Court held that Title II of the Act 'authorize[d] EPA to regulate greenhouse gas emissions from new motor vehicles' if the Agency 'form[ed] a 'judgment' that such emissions contribute to climate change.'" (quoting *Massachusetts*, 549 U.S. at 528)).

[8] *See* Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818.

[9] *See* Control of Air Pollution From Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures, 86 Fed. Reg. 2,136 (Jan. 11, 2021); Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 89 Fed. Reg. 16,820 (Mar. 8, 2024); New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 89 Fed. Reg. 39,798 (May 9, 2024); Standards of Performance for Municipal Solid Waste Landfills, 81 Fed. Reg. 59,332 (Aug. 29, 2016).

In the proposed rule, EPA reverses course, contending that the CAA does not allow for regulation of GHG emissions from motor vehicles. Its primary statutory arguments include the following:

- CAA section 202(a) "is best read in context as referring to local or regional exposure to dangerous air pollution[.]"[10]

- CAA section 202(a) "does not grant the Administrator 'procedural discretion' to issue standalone findings that trigger a duty to regulate . . . without making the requisite findings for the particular air pollutant emissions and class or classes of new motor vehicles or engines at issue."[11]

- CAA section 202(a) allows for consideration of only whether "the relevant air pollutant emissions from the class or classes of new motor vehicles or engines at issue cause, or contribute to, air pollution which endangers public health or welfare, without relying on emissions from stationary or other sources regulated by distinct CAA provisions."[12]

None of these arguments has merit, and each is addressed in turn. [C-1, C-11, C-12, C-14, C-15, C-24, C-26, C-27]

B. EPA's Clean Air Act authority encompasses GHGs, and it is not limited to local or regional pollutants.

EPA is wrong that its authority under CAA section 202(a) is limited to local and regional pollutants and does not extend to GHGs. The proposal asserts "that CAA section 202(a) does not provide authority to regulate GHGs based on global climate change concerns . . . ."[13] It reasons that the Agency is working from a blank slate because *Massachusetts* "did not consider or have reason to interpret the scope of the EPA's authority under CAA section 202(a) . . . ."[14] But this issue was squarely raised and decided in that case.

The *Massachusetts* Court expressly stated that the "question is whether § 202(a)(1) of the Clean Air Act authorizes EPA to regulate greenhouse gas emissions from new motor vehicles in the event that it forms a 'judgment' that such emissions contribute to climate change. We have little trouble concluding that it does."[15] *Massachusetts* concluded that the "broad language of § 202(a)(1) reflects an intentional effort to confer the flexibility" on EPA, and so "EPA has the statutory authority to regulate the emission of such gases from new motor vehicles" pursuant to

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[10] Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, 90 Fed. Reg. 36,288, 36,290 (Aug. 1, 2025).

[11] *Id.*

[12] *Id.*

[13] *Id.* at 36,302.

[14] *Id.* at 36,307.

[15] 549 U.S. at 528.

CAA section 202(a) because "greenhouse gases fit well within the Clean Air Act's capacious definition of 'air pollutant[.]'"[16]

There is no credible argument that the *Massachusetts* Court was interpreting anything other than the scope of the Agency's authority under section 202(a), or that it did not consider whether GHGs are properly considered air pollutants for purposes of regulation under the statute.[17] The Court held that statutory text forecloses EPA's reading that "carbon dioxide is not an 'air pollutant' within the meaning of the provision."[18] The Court referred to section 202(a)(1) to dismiss EPA's contention that Congress did not intend the Agency to regulate GHGs from motor vehicles because doing so would result in "extreme measures."[19] Again citing section 202(a), the Court reasoned that "EPA would only regulate emissions, and even then, it would have to delay any action 'to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance[.]'"[20] While the Court relied on the CAA's definition of "air pollutant" in section 302(g) to determine the meaning of the same term in section 202(a)(1), that was only because section 302 sets forth the general definitions applicable to the CAA as a whole.[21]

The Court continued that "[w]hile the statute does condition the exercise of EPA's authority on its formation of a 'judgment,'" that is not "a roving license to ignore the statutory text."[22] Rather, EPA may decline to regulate "only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do."[23]

EPA is thus wrong that section 202(a) only authorizes regulation of air pollution that endangers public health or welfare "through local or regional exposure," and that global climate change concerns cannot satisfy the statutory standard for regulation under CAA section 202(a).[24]

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[16] *Id*. at 532.

[17] EPA's contention that *Massachusetts* did not consider whether "GHGs meet the statutory standard for regulation under CAA section 202(a)" misses the mark. 90 Fed. Reg. at 36,302. The Court's statement that it "need not and do[es] not reach the question whether on remand EPA must make an endangerment finding" means that EPA retains authority to determine whether the statutory standard for regulation is satisfied, not whether GHGs qualify as air pollutants in the first place. *Id*.

[18] 549 U.S. at 528.

[19] *Id.* at 531.

[20] *Id*. (quoting 42 U.S.C. § 7521).

[21] *See* 42 U.S.C. § 7602.

[22] 549 U.S. at 532-33.

[23] *Id.* at 533.

[24] 90 Fed. Reg. at 36,300.

The Agency is also wrong that *Massachusetts* does not govern on this point. That argument was raised and rejected by *Massachusetts*, and so it is foreclosed.[25]

The argument is also unsupported as a matter of statutory text. Nothing in the statutory text requires that air pollution cause harm "through local or regional exposure" alone. Section 202(a)(1) requires EPA to regulate emissions that "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." That language is broad and unqualified. EPA purports to derive its new requirement from the fact that "section 202 specifically addresses" other listed pollutants, "all of which harm health and the environment through exposure . . . or by causing or contributing to air pollution that harms health and the environment through exposure . . . ."[26] But there is no sound reason to think that, in listing other air pollutants for other purposes elsewhere in section 202, Congress meant to limit the capacious language of section 202(a)(1) only to listed pollutants, or to those pollutants that cause harm from direct exposure.

Even on its own terms, EPA's argument fails. Greenhouse gases *do* in fact cause harm from exposure. Specifically, GHGs cause ocean acidification, which occurs when atmospheric carbon dioxide dissolves in seawater and forms carbonic acid, lowers ocean pH, and creates a fundamental threat to marine ecosystems.[27] This chemical change makes it difficult for marine organisms like oysters, corals, and shellfish to build and maintain their calcium carbonate shells and skeletons, potentially causing population collapse and ecosystem disruption.[28] The impacts extend beyond individual species to threaten entire food webs, coastal communities dependent on marine resources, and industries like commercial fishing and tourism.[29] While the 2009 endangerment finding recognized that ocean acidification was a direct effect of greenhouse gas emissions, the proposal provides no rationale for why effects such as these are irrelevant to the question of whether GHGs may be regulated under the CAA.[30]

Further, the statutory framework EPA proposes is illogical because the distinction it identifies between GHGs and conventional pollutants does not hold. Other conventional pollutants cause harm through complex chemical and biological processes rather than direct

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[25] *See supra* at 3-4.

[26] 90 Fed. Reg. at 36,300.

[27] *Ocean Acidification*, Nat'l Oceanic & Atmospheric Admin., https://www.noaa.gov/education/resource-collections/ocean-coasts/ocean-acidification (last updated Sept. 17, 2025); Rebecca Lindsey, *Climate Change: Atmospheric Carbon Dioxide*, Nat'l Oceanic & Atmospheric Admin. (May 21, 2025), https://www.climate.gov/news-features/understanding-climate/climate-change-atmospheric-carbon-dioxide.

[28] *Understanding Ocean Acidification*, Nat'l Oceanic & Atmospheric Admin. Fisheries, https://www.fisheries.noaa.gov/insight/understanding-ocean-acidification (last visited Sept. 19, 2025); *Climate Change Indicators: Ocean Acidity*, EPA, https://www.epa.gov/climate-indicators/climate-change-indicators-ocean-acidity (last updated Jan. 15, 2025).

[29] *Understanding Ocean Acidification*, Nat'l Oceanic & Atmospheric Admin. Fisheries, https://www.fisheries.noaa.gov/insight/understanding-ocean-acidification (last visited Sept. 19, 2025); U.S. Gov't Accountability Off., GAO-14-736, *Ocean Acidification: Federal Response Under Way, but Actions Needed to Understand and Address Potential Impacts*, at 1, 12 (Sept. 2014).

[30] 74 Fed. Reg. at 66,534.

effects. For example, nitrogen oxides (NOx), which are regulated as a criteria pollutant, cause harm in part by interacting with volatile organic compounds (VOCs) in the presence of sunlight and then forming ozone.[31] This harm is indirect. So too mercury causes harm through an indirect process. There, microbes convert inorganic mercury into methylmercury, a more toxic form that bioaccumulates through the food chain, and is transported globally.[32] These pollutants are analogous in significant respects to GHGs, which cause harm to public health and welfare by increasing temperature, and by increasing the criteria pollutant "ambient ozone," which itself directly has adverse health impacts.[33]

The terms "cause" and "contribute" likewise do not support EPA's reading. EPA proposes that section 202(a) incorporates background tort principles of proximate cause.[34] That is wrong as a matter of statutory text. For one, when Congress uses "less legalistic language" in lieu of "the words 'proximate cause,'" "there is little reason for courts to hark back to stock, judge-made proximate-cause formulations."[35] And in the case of section 202(a), there is especially little reason to think Congress meant to incorporate a proximate cause standard, given its specification that a pollutant need only "contribute to" dangerous air pollution. As courts have explained, "contribute" in this context "means simply 'to have a share in any act or effect'. . . or 'to have a part or share in producing[.]'"[36] For another, unlike other sections of the CAA, section 202(a) does not require any specific level of contribution. Section 111(b)(1)(A), for example, requires the EPA administrator to list a new source category if it "causes, or contributes *significantly* to, air pollution,"[37] while section 110(a)(2)(D)(i)(I) prohibits emissions that will "contribute *significantly* to" nonattainment of ambient air quality standards in another state.[38] The omission of any modifier before "contributes to" in section 202(a) indicates that Congress intended to adopt the ordinary meaning of the word "contribute," not a higher contributory requirement, let alone a judge-made formulation of proximate cause.[39] EPA's reading not only ignores Congress's deliberate choice to adopt a low contribution threshold, but goes as far as to

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[31] *Ground-level Ozone Basics*, EPA, https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics (last updated Mar. 11, 2025).

[32] EPA, *Systematic Review Protocol for the Methylmercury (MeHg) IRIS Assessment (Preliminary Assessment Materials)*, at 2-3, EPA/635/R-19/243 (May 2020), https://bit.ly/41XhWRN.

[33] 74 Fed. Reg. at 66,526 (describing that "[i]ncreases in ambient ozone are expected to occur over broad areas of the country, and they are expected to increase serious adverse health effects in large population areas that are and may continue to be in nonattainment").

[34] *See* 90 Fed. Reg. at 36,301.

[35] *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 702-03 (2011).

[36] *Bluewater Network v. EPA,* 370 F.3d 1, 13 (D.C. Cir. 2004) (quoting *Webster's Third New International Dictionary* 496 (1993), 3 *Oxford English Dictionary* 849 (2d ed. 1989)).

[37] 42 U.S.C. § 7411 (emphasis added).

[38] 42 U.S.C. § 7410.

[39] *See e.g. Bluewater Network*, 370 F.3d at 14 (omission of the modifier "significant" from "cause, or contribute to" in a section of the CAA reflects a deliberate choice in favor regulation of "nontrivial contribution[s] to pollution").

read "contribute" out of the statute entirely, contrary to the "cardinal principle" that statutes ought to be construed so that no "word shall be superfluous, void, or insignificant."[40]

And in any event, EPA is also wrong that GHG pollution is not a proximate cause of the harmful impacts from climate change. EPA proposes that emissions from new motor vehicles lack a "sufficiently close connection" to the adverse impacts identified in the endangerment finding to satisfy proximate cause.[41] But proximate cause does not require only one link in the chain between action and consequence, or that an action create the consequence entirely by itself.[42] Instead, proximate cause is a "flexible concept" that "is often explicated in terms of foreseeability or the scope of the risk created by the predicate conduct."[43] Therefore, it precludes liability only where the causal link "is so attenuated that the consequence is more aptly described as mere fortuity."[44] Thus, even if proximate cause were the standard—which it is not, for all the reasons stated *supra*—the question would be whether it is foreseeable that GHG pollution will contribute to climate change and have harmful effects. It is eminently clear that GHG pollution meets this standard whether the pollutants are considered in aggregate or not.[45] [C-1, C-11, C-12, C-14, C-15, C-27]

C. CAA section 202(a) does not require integrated findings.

CAA section 202 does not mandate that the EPA issue an endangerment finding and motor vehicle emission standards together with a single Federal Register notice. The proposal contends that the CAA speaks directly to this issue and "sets out an integrated process that requires the EPA to prescribe standards when the Administrator finds certain conditions are met."[46] The Agency further asserts that "[w]hen Congress intends a multistep inquiry in the environmental context, it typically says so expressly."[47] As support, the proposal references the

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[40] *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (quoting *Duncan v. Walker*, 533 U.S. 167 (2001)).

[41] 90 Fed. Reg. at 36,301.

[42] *See e.g. Milwaukee & St. Paul Ry. Co. v. Kellogg*, 94 U.S. 469, 474 (1876) (explaining the foundational principle that "the proximate cause of a disaster . . . may operate through successive instruments").

[43] *Paroline v. United States*, 572 U.S. 434, 445 (2014).

[44] *Id*.

[45] *See, e.g.*, EPA, *Technical Support Document for Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act*, Appendix B (Dec. 7, 2009), https://www.epa.gov/sites/default/files/2016-08/documents/endangerment_tsd.pdf (concluding that 202(a) source categories are responsible for about 4 percent of total global well-mixed greenhouse gas emissions and just over 23 percent of total U.S. well-mixed greenhouse gas emissions); Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,510, 64,532 (Oct. 23, 2015) (demonstrating cause and contribution for each pollutant and source through separate sectoral analyses); Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources, 81 Fed. Reg. 35,824, 35,833 (June 3, 2016) (same).

[46] 90 Fed. Reg. at 36,303.

[47] *Id*.

National Ambient Air Quality Standards (NAAQS) Program, where EPA establishes the NAAQS in one action and states later set source-specific standards in separate actions.[48]

The CAA's plain language, read in context, does not support the proposal's interpretation. Section 202(a)(1) provides in full: "The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."[49] The statutory language establishes a two-part analytical framework: first, the Administrator must determine whether emissions from motor vehicles "may reasonably be anticipated to endanger public health or welfare," and second, the Administrator must prescribe standards for those emissions. Nothing in the text requires these distinct determinations—the endangerment finding and the emission standards—to be made simultaneously or published in the same regulatory action.

EPA has long made endangerment findings about the hazard posed by air pollution as a separate analytical step preceding standard-setting, even where the endangerment finding has been finalized in the same Federal Register notice as the relevant standards.[50] The threshold endangerment analysis has always focused on risk—that is, whether the air pollution "may reasonably be anticipated to endanger public health or welfare."[51]

Many other environmental statutes share this two-part structure, requiring an agency to evaluate the risks from pollution before considering what might be done about them. These statutes include CAA section 112 for hazardous air pollutants,[52] Clean Water Act section 311 for hazardous substances[53] and section 307(a) for toxic pollutants,[54] and Resource Conservation and

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[48] *Id*.

[49] 42 U.S.C. § 7521(a)(1).

[50] *E.g.*, Control of Emissions of Air Pollution From Nonroad Diesel Engines and Fuel , 69 Fed. Reg. 38,958, 38,962-63 (June 29, 2004) (final regulation of certain emissions from nonroad engines pursuant to CAA Section 213(a)(4)); Control of Air Pollution; Determination of Significance for Nonroad Sources and Emission Standards for New Nonroad Compression- Ignition Engines At or Above 37 Kilowatts , 59 Fed. Reg. 31,306, 31,318 (June 17, 1994) (same); Control of Emissions of Air Pollution From Nonroad Diesel Engines and Fuel, 68 Fed. Reg. 28,328, 28,336-37 (May 23, 2003) (nonroad engines proposed rule); Control of Air Pollution; Emissions of Oxides of Nitrogen and Smoke From New Nonroad Compression-Ignition Engines at or Above 50 Horsepower, 58 Fed. Reg. 28,809, 28,845-46 (May 17, 1993) (same); *see also, e.g.*, Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, 66 Fed. Reg. 5002, 5007-08 (Jan. 18, 2001) (final standards for highway heavy duty diesel engines and diesel sulfur fuel); Control of Air Pollution From New Motor Vehicles: Proposed Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, 65 Fed. Reg. 35,430, 35,435-46 (June 2, 2000) (proposed rule for the same).

[51] 42 U.S.C. § 7521(a)(1).

[52] 42 U.S.C. § 7412.

[53] 33 U.S.C. § 1321.

[54] 33 U.S.C. § 1317(a).

Recovery Act section 3001 for hazardous wastes.[55] In context, the plain language of CAA section 202(a) does not specify the timing of an endangerment finding, other than to make clear that emissions standards can only issue if such a determination has been made.

Even if CAA section 202(a) requires EPA to finalize the endangerment finding in the same action as it sets standards for motor vehicles, any error in finalizing separate actions is harmless. The proposal asserts that the finalization of the endangerment finding separate from the standards meant that EPA committed three errors that now require reconsideration—namely, that in making the endangerment finding, EPA failed to consider (1) cost, (2) human adaptation, and (3) potential beneficial impacts from climate change.[56] But those factors are all irrelevant to this aspect of the section 202(a) statutory analysis.

The CAA requires EPA's endangerment determination (whether done in a single Federal Register notice or in separate notices) to be based exclusively on scientific evidence regarding whether an air pollutant "cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare."[57] The plain language of this provision is focused entirely on an assessment of risk of harm. Just like the other environmental statutes discussed above, the CAA directs EPA to consider risk first, before it considers whether standards are appropriate to address that risk.

For that reason, factors like the costs and benefits of regulating the pollutant—including whether regulation is worthwhile given potential adaptation or beneficial impacts—are not properly considered when determining whether pollution creates a risk of harm. The Supreme Court reached this exact conclusion in *Massachusetts*. There, the Supreme Court rejected EPA's reliance on policy-based justifications—including implementation issues and foreign policy concerns—to avoid making an endangerment finding under section 202(a)(1). As the Court explained, these factors have "nothing to do with whether greenhouse gas emissions contribute to climate change" and so do not serve as "a reasoned justification for declining to form a scientific judgment."[58] EPA can only avoid making an endangerment finding if it determines that GHGs do not contribute to climate change or provides a reasonable scientific explanation for why it cannot make such a determination, as "the statutory question is whether sufficient information exists to make an endangerment finding."[59] EPA does neither in its proposal.

Economic considerations belong in the standard-setting phase, where the Agency evaluates how to regulate, balancing costs and benefits. EPA's approach would result in double counting: considering costs and benefits both in determining whether a pollutant causes harm and whether regulation is worthwhile. Thus, while *Michigan v. EPA*[60] can support consideration

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[55] 42 U.S.C. § 6921.

[56] 90 Fed. Reg. at 36,303.

[57] 42 U.S.C. § 7521(a)(1)

[58] *Massachusetts*, 549 U.S. at 533-34.

[59] *Id*.

[60] 576 U.S. 743 (2015).

of costs in determining what regulation is appropriate, EPA's approach of considering costs multiple times over is unsupported.[61] [C-1, C-11, C-12, C-13, C-14, C-15, C-21, C-27]

D. EPA's interpretation of the term "cause or contribute" is likewise flawed.

EPA proposes that it must evaluate "whether source emissions cause or contribut[e] to air pollution and whether that air pollution poses endangerment in a single causal chain[.]"[62] That argument is wrong, for the reasons stated *supra*, and accepting it would clearly require overruling past precedent.[63]

EPA is also wrong that the 2009 endangerment finding was not sufficiently focused on "new motor vehicles or new motor vehicle engines."[64] EPA first suggests that, when making the endangerment finding, EPA cannot "consider[] all sources in analyzing the danger posed by elevated concentrations of GHGs in the upper atmosphere[.]"[65] But that is precisely what the statute requires. Section 202(a)(1) tasks EPA first with identifying "air pollution which may reasonably be anticipated to endanger public health or welfare." Nowhere does that statutory text limit EPA to examine only pollution by new motor vehicles alone. Rather, the CAA expressly takes a broader lens, defining an "air pollutant" in section 302(g) capaciously as "any air pollution agent or combination of such agents" including "any precursors to the formation of any air pollutant." Indeed, EPA's position that it may consider only emissions from new motor vehicles is itself contrary to the statute: EPA would ask simply whether such emissions themselves "cause" dangerous air pollution, effectively reading the words "contribute to" out of the statute. EPA next objects that, when analyzing contribution, the 2009 endangerment finding used emissions data from the entire fleet, not just new vehicles.[66] But the statute is not so parsimonious. All it requires of EPA is to determine whether new motor vehicle emissions "contribute to" air pollution that may pose risk, without specifying what kinds of emission data EPA may use in that analysis.[67]

Further, EPA fails to consider the impacts of its proposed interpretation. The proposal would have EPA focus only on whether the emissions of new motor vehicles, in isolation, pose

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[61] *Michigan* addressed another provision of the CAA, 42 U.S.C. § 7412(n)(1)(A), which is structured differently from section 202(a). Under this section, costs and benefits are considered when determining whether to regulate emissions from power plants. If EPA concludes regulation is appropriate and necessary for this source category, the standards are set according to a rigid formula that does not include a second, duplicative cost-benefit balancing. 576 U.S. at 748-49.

[62] 90 Fed. Reg. at 36,303.

[63] *See Massachusetts*, 549 U.S. at 523-24; *Coal. for Responsible Regul., Inc.*, 684 F.3d at 118-19, 123; *see also Ethyl Corp. v. EPA*, 541 F.2d 1, 12-13, 25-26 (D.C. Cir. 1976).

[64] 90 Fed. Reg. at 36,304.

[65] *Id.*

[66] *Id.*

[67] *See also supra* at 6 (the ordinary meaning of "contribute" is "to have a share in any act or effect" or "to have a part or share in producing").

risk.[68] But the most serious harms to public health and welfare almost always come from air pollution across source categories *in the aggregate*, not from any individual source category in isolation. For example, particulate matter—a dangerous air pollutant causing a wide variety of adverse health effects—is emitted, along with its precursors, from dozens of distinct anthropogenic source categories (*e.g.*, electricity generating units, cars and trucks, agricultural operations, and construction activities), as well as from natural sources (*e.g.*, sea salt, wildland fires, and pollen).[69] NOx concentrations likewise come from both anthropogenic and natural sources, with anthropogenic sources including a "wide variety of source types" such as mobile sources and fuel combustion by stationary sources.[70] In both cases, it is the aggregate risk from all the source categories together, rather than from a single source category alone, that causes the harm.[71] However, under EPA's proposed standard, according to which an individual source category could be regulated only if its pollution is single-handedly responsible for the harm, many conventional pollutants likely could not be regulated because controlling any individual source category would not meaningfully address the aggregate health problem that the pollutant creates.

Indeed, the arguments EPA advances here to support its claim that GHG pollution is not reasonably anticipated to endanger public health or welfare were made some 50 years ago to challenge regulation of lead in gasoline.[72] There, industry argued that lead emissions from gasoline combustion did not create the requisite endangerment because they only caused harm together with other sources of lead pollution. The D.C. Circuit rejected this argument, concluding it was appropriate to consider the impact of lead emissions cumulatively from multiple sources.[73] This ruling has stood the test of time and been ratified by Congress.[74] And there is no sound reason for EPA to abandon its longstanding consideration of cumulative emissions at this late date. [C-1, C-11, C-12, C-15, C-27]

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[68] 90 Fed. Reg. at 36,304-05.

[69] Review of the National Ambient Air Quality Standards for Particulate Matter, 85 Fed. Reg. 82,684, 82,696 (Dec. 18, 2020) (describing health effects); EPA, *Policy Assessment for the Reconsideration of the National Ambient Air Quality Standards for Particulate Matter*, EPA-452/R-22-004, at 2.1.1, 2.4.1 (May 2022), https://www.epa.gov/system/files/documents/2022-05/Final%20Policy%20Assessment%20for%20the%20Reconsideration%20of%20the%20PM%20NAAQS_May2022_0.pdf.

[70] Review of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen, 83 Fed. Reg. 17,226, 17,228 (Apr. 18, 2018).

[71] *See* National Ambient Air Quality Standards for Particulate Matter, 78 Fed. Reg. 3,086, 3,100 (Jan. 15, 2013).

[72] *See Ethyl Corp.*, 541 F.2d 1.

[73] *Id.* at 29.

[74] *Massachusetts*, 549 U.S. at 506 n.7 (concluding Congress amended section 202(a)(1) to "give its approval to" the D.C. Circuit's decision in *Ethyl Corporation*).

E. EPA's proposal is not compelled by intervening case law on the major questions doctrine or *Chevron* deference.

EPA posits that "significant Supreme Court decisions" on the major questions doctrine and *Chevron* deference require reconsideration of the endangerment finding because these decisions purportedly "provide new guidance on how federal agencies should interpret the statutory provisions that Congress has tasked them with administering."[75] EPA is wrong on both counts.

a. Recent major questions decisions do not justify reconsideration.

EPA asserts that "the major questions doctrine further reinforces and provides an additional basis" for repealing the endangerment finding, "because the Nation's response to global climate change concerns is an issue of significant importance that Congress did not clearly address in CAA section 202(a)."[76] Like the statutory arguments advanced above, the Court has already considered and rejected this argument too, and it is meritless in any event.

The *Massachusetts* Court explicitly considered whether EPA could conclude that GHGs were air pollutants under the CAA without a clear statement from Congress. There, EPA argued that it lacked statutory authority over GHGs because "climate change was so important that unless Congress spoke with exacting specificity, it could not have meant the Agency to address it."[77] EPA continued that it was "urged on in this view"[78] by *FDA v. Brown & Williamson Tobacco Corp*.,[79] in which the Court held that an express statutory command was necessary for an agency to exercise jurisdiction in a new area of great economic or political significance.[80] The Court squarely rejected this argument, concluding that *Brown & Williamson*'s clear statement rule did not apply to CAA section 202(a)(1). The Court explained that "there is nothing counterintuitive to the notion that EPA can curtail the emission of substances that are putting the global climate out of kilter," and—unlike in *Brown & Williamson*—there is no subsequent "congressional action that conflicts in any way with the regulation of greenhouse gases from new motor vehicles."[81] The Court further held that the "broad language of [CAA] § 202(a)(1) reflects an intentional effort to confer the flexibility" on EPA, and that "greenhouse gases fit well within the Clean Air Act's capacious definition of 'air pollutant[.]'"[82]

EPA now contends that "recent Supreme Court decisions, including . . . *West Virginia,* [and] *UARG*" "provided new guidance on how we should interpret and apply the statutes

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[75] 90 Fed. Reg. at 36,296.

[76] *Id.* at 36,291.

[77] 549 U.S. at 512.

[78] *Id.*

[79] 529 U.S. 120 (2000).

[80] *Id.*

[81] *Id.* at 531.

[82] *Id*. at 532.

Congress entrusted us to administer," thus warranting reconsideration of the endangerment finding.[83] But the Court expressly stated in *West Virginia* that it was *not* announcing a new major questions doctrine out of whole cloth, but rather applying the same analytical framework it applied in *Brown & Williamson*.[84] It explained that the "'key case' in this area, *Brown & Williamson*, . . . could not have been clearer: 'In extraordinary cases . . . there may be reason to hesitate' before accepting a reading of a statute that would, under more 'ordinary' circumstances, be upheld."[85] In *UARG* too, the Court recognized that it was merely applying the longstanding *Brown & Williamson* standard—that "[w]e expect Congress to speak clearly if it wishes to assign to an agency decisions of vast 'economic and political significance.'"[86]

EPA must take the Court at its word. On their own terms, *West Virginia* and *UARG* did not announce any "new" principle or doctrine—both simply applied the same rule as *Brown & Williamson*. Thus, fairly considered, neither case is "new guidance on how federal agencies should interpret the statutory provisions," and neither provides a basis for reconsidering the endangerment finding now.[87] Because the Court in *Massachusetts* already considered and rejected EPA's current argument, any conclusion that the major questions doctrine requires a different result—namely, that "the Nation's response to global climate change concerns is an issue of significant importance that Congress did not clearly address in CAA section 202(a)"[88]—would necessarily require overruling *Massachusetts*, which EPA cannot do.

Even assuming that *UARG* and *West Virginia* provide "new guidance," the major questions doctrine is still inapt here. For one, EPA has a longstanding practice of regulating GHG emissions, which is fully consistent with the statute's plain text and history.[89] Indeed, recent evidence suggests that Congress was made aware of then-existing scientific work on GHG emissions and considered the issue when passing the Clean Air Act.[90] Accordingly, even if the Court overruled *Massachusetts* and applied the major questions doctrine, the history and context of the CAA generally and section 202 specifically indicate that Congress intended to authorize EPA to regulate GHGs.[91] And this issue bears no resemblance to *UARG*, where the Court found that regulating GHGs under the Prevention of Significant Deterioration CAA program would, by the statute's plain terms, "require permits for the construction and modification of tens of

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[83] 90 Fed. Reg. at 36,291.

[84] *West Virginia v. EPA*, 597 U.S. 697, 723 (2022) (disclaiming that the opinion was '"announc[ing] the arrival' of th[e] major questions doctrine" (quoting Kagan, J., dissenting)).

[85] *Id.* at 723-24 (quoting *Brown & Williamson*, 529 U.S. at 159).

[86] *Util. Air Regul. Grp.*, 573 U.S. at 324 (quoting *Brown & Williamson*, 529 U.S. at 160).

[87] 90 Fed. Reg. at 36,296.

[88] *Id.* at 36,291.

[89] *See supra* at 2 & n.6.

[90] *See generally* Naomi Oreskes et al., *Climate Change and the Clean Air Act of 1970 Part I: The Scientific Basis*, 50 Ecology L.Q. 811 (2023).

[91] *Id.* at 815 nn.12-13 (describing contemporaneous government reports about greenhouse gas emissions).

thousands, and the operation of millions, of small sources nationwide . . . ."[92] Regulation of GHG emissions from motor vehicles does not expand the number of sources regulated—the same sources remain subject to regulation as before. Further, here, regulation of motor vehicles under the CAA does not require "revis[ion] [of] clear statutory terms," nor does it "turn out not to work in practice."[93] The successful regulation of motor vehicles under the CAA for more than a decade proves as much.

Nor is this case like *West Virginia*. There, the Court concluded that the rule at issue was not an emissions control technology, but rather a mandate based on "generation shifting" favoring one form of energy generation (renewables) over another (fossil-based)—something wholly different from the emissions reduction technologies applied in the past.[94] Here, regulation of motor vehicles under the CAA does not require "generation shifting" as that term was understood in *West Virginia*, and favoring a new mode of transportation (say, bicycles) over motor vehicles.[95]

b. *Loper Bright* does not provide a basis for reconsideration.

EPA further argues that the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*[96] provides a basis for reconsidering the endangerment finding.[97] In *Loper Bright*, the Supreme Court overruled *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*,[98] holding that "courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous."[99]

Massachusetts did not rely on *Chevron* deference to conclude that GHGs were air pollutants under Clean Air Act section 202. Rather, the Court rejected "EPA's invitation to read ambiguity into a clear statute."[100] The Court concluded the "statute [was] unambiguous" and the Clean Air Act's "sweeping definition of 'air pollutant' . . . embraces all airborne compounds of whatever stripe" including "[c]arbon dioxide, methane, nitrous oxide, and hydrofluorocarbons . . . ." [101] Thus, *Loper Bright* is not an intervening precedent that provides a basis to reconsider the endangerment finding. [C-1, C-11, C-24, C-25, C-26]

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[92] 573 U.S. at 324.

[93] *Id*. at 327.

[94] 597 U.S. at 728-29.

[95] *See also infra* at 25-26 (explaining why the regulations are not an EV mandate).

[96] 603 U.S. 369 (2024).

[97] 90 Fed. Reg. at 36,291.

[98] 467 U.S. 837 (1984).

[99] 603 U.S. at 395.

[100] 549 U.S. at 531.

[101] *Id.* at 528-29.

F. If finalized, EPA's proposal may allow states to regulate GHG emissions from new motor vehicles.

The proposal fails to grapple with in detail the scope of state authority if EPA determines the CAA does not give the Agency authority to regulate greenhouse gases. Section 7543(a) provides that "[n]o State . . . shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part."[102] If EPA has no authority to regulate the emissions at issue, there are serious questions as to whether standards governing those pollutants would be "subject to this part," and therefore preempted.[103] [C-1, C-10]

II. EPA's Alternative Science-Based Rationale Is Arbitrary and Capricious Because It Rests on Faulty Science.

EPA rests the alternative science-based rationale almost entirely on a report of the DOE's Climate Working Group. The report is out of scope, and should not be considered by EPA in any respect. Reliance on the flawed report would be patently arbitrary and capricious.[104] Agencies often receive deference for carefully considered decisions within their sphere of expertise. It has never been the case, however, that an agency can shield itself from scrutiny by invoking "science" where the agency's analysis lacks rigor, and fails to follow accepted scientific methodology. The DOE Climate Working Group report bears none of the hallmarks of scientific integrity: it has not been peer reviewed, it is not objective, and it does not meet the accepted standards for transparency or reproducibility. It is also contrary to the great weight of scientific evidence.[105]

A. Scientific findings play a critical role in federal agency decision-making.

Expert scientific findings play a critical role in administrative agency rulemakings and serve as the foundation for regulatory decisions that protect public health, safety, and welfare, and require compliance investments by regulated parties. Because scientific assessments and conclusions serve as the foundation for these public health regulations, the stability of the regulatory regime is directly tied to the validity of these scientific findings. To this end, federal courts have long recognized the importance of rigorous scientific processes in ensuring that regulatory actions rest on reliable evidence rather than political preferences or flawed methodologies.

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[102] 42 U.S.C. § 7543(a).

[103] *See id*.

[104] *Ergon W. Va. Inc. v. EPA*, 896 F.3d 600, 610 (4th Cir. 2018) ("[A]n action agency's reliance on a facially-flawed report is arbitrary and capricious.").

[105] *See generally* National Academies of Science, Engineering, and Medicine, *Effects of Human-Caused Greenhouse Gas Emissions on U.S. Climate, Health, and Welfare* (2025), https://nap.nationalacademies.org/catalog/29239/effects-of-human-caused-greenhouse-gas-emissions-on-us-climate-health-and-welfare.

Federal courts have consistently established that agency scientific determinations deserve judicial deference only when based on proper scientific methodology and supported by an adequate record. More than forty years ago, the Supreme Court evaluated the Nuclear Regulatory Commission's assessment of nuclear waste storage risks, and considered the appropriate measure of deference to the Commission's scientific findings.[106] The Supreme Court held that "[w]hen examining this kind of scientific determination, as opposed to simple findings of fact, a reviewing court must generally be at its most deferential" because agencies make "predictions, within [their] area of special expertise, at the frontiers of science."[107] This deference is not reflexive, however, but premised on the agency employing scientifically valid approaches, and undertaking "careful consideration and disclosure."[108]

As the D.C. Circuit has explained, an agency may not "rely on reminders that its scientific determinations are entitled to deference."[109] In short, courts do not sit merely to "rubber stamp" agency decisions that invoke scientific expertise.[110] Judicial deference is rooted in the recognition that agencies, with their technical expertise, are often better placed to weigh competing evidence where the scientific consensus is not yet settled. But it is not license for agencies to ignore Congress' mandate or reject the best available scientific evidence in favor of preliminary or fringe conclusions.

As part of this careful consideration and disclosure, scientific judgments must not include impermissible considerations like policy preferences.[111] While political preferences can sometimes be relevant when the agency determines whether and how to regulate conduct, they are irrelevant to scientific assessments of endangerment or harm.[112] Determining whether a pollutant endangers public health and welfare is a purely scientific question requiring objective, unbiased analysis.[113]

Notwithstanding developments in other areas of administrative law, the Supreme Court continues to recognize the important role of agency technical and scientific expertise. In *Loper Bright*, for example, the Court expressly acknowledged that the agency's factual determinations can be powerful where they rest on the "body of experience and informed judgment."[114] By

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[106] *See Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 103 (1983).

[107] *Id*.

[108] *Id*. at 98–99.

[109] *Nat. Res. Def. Council, Inc. v. Daley*, 209 F.3d 747, 755 (D.C. Cir. 2000) (citation omitted).

[110] *Id*.

[111] *Massachusetts*, 549 U.S. at 534.

[112] *Id*. (rejecting regulatory analysis that failed to provide a "reasoned explanation" on the scientific question of "whether greenhouse gases contribute to global warming").

[113] *Id*.

[114] 603 U.S. at 402 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)).

extension, agency factual or scientific determinations that do not reflect the agency's experience and judgment would not be deserving of such respect.

Adherence to accepted scientific procedures and standards ensures that regulatory decisions rest on solid foundations and provide the predictability that regulated industries need to make informed investment and compliance decisions. Thus, maintaining rigorous scientific processes is not a bureaucratic formality but essential for regulatory stability and economic certainty. When scientific evaluations stray from established methods, they undermine the predictable regulatory environment that businesses depend on for strategic planning and capital allocation, making it difficult for companies to function efficiently in both home and global markets. [C-1, C-2, C-23, C-24, C-26]

B. The DOE Climate Working Group draft report departs substantially from accepted scientific standards.

Fidelity to established principles for data quality and scientific integrity is fundamental to producing trustworthy scientific findings that can properly serve as the basis of federal regulatory action and withstand judicial scrutiny. Rushed scientific assessments, by contrast, compromise quality and undermine confidence in results. Longstanding federal standards for data quality and scientific integrity have operated as a "stable background" for regulated parties and fostered meaningful reliance.[115]

The DOE Climate Working Group report departs from these established principles in multiple critical respects.

Lack of Peer Review and Quality Assurance. Federal rules require scientific analyses to be transparent, unbiased, and supported by adequate evidence. The Information Quality Act requires federal agencies to issue guidelines ensuring the "quality, objectivity, utility, and integrity" of information disseminated to the public and to establish administrative mechanisms allowing affected persons to seek correction of information that fails to meet these standards.[116] Under the Office of Management and Budget's implementing guidelines, "influential scientific . . . information" that will have "a clear and substantial impact on important public policies" must be produced in an "open and rigorous manner"; it must undergo formal external peer review and meet high transparency standards for data and methods to facilitate reproducibility.[117] To rely on this report for regulatory decision-making as the Administration apparently intends to do, Executive Order No. 12,866 further requires that "[e]ach agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information . . . ."[118] In addition, President Trump's recent executive order "Restoring Gold Standard Science," reaffirms

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[115] *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 261 (2010).

[116] Consolidated Appropriations—FY 2001, Pub. L. No. 106-554, § 515(a), 114 Stat. 2763, 2763-153-54 (2000).

[117] Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452, 8460 (Feb. 22, 2002).

[118] Exec. Order No. 12,866, § 1(b)(7), 58 Fed. Reg. 51,735, 51,736 (Sept. 30, 1993).

the relevance of principles including that science be "reproducible," "transparent," "subject to unbiased peer review," and conducted "without conflicts of interest."[119]

- The report lacks the independent external peer review required by federal standards. Only "a team of anonymous DOE and national lab reviewers whose input helped improve the final report" provided input.[120] Such haphazard, internal review does not satisfy the independent external peer review required for influential scientific information as it was not conducted in an "open and rigorous manner."[121]

- The rushed timeline and express acknowledgment that comprehensive review was impossible violate basic requirements for thorough scientific assessment. The authors explicitly concede that "[t]he short timeline and the technical nature of the material meant that we could not comprehensively review all topics" and instead focused only on a select few they believed "are downplayed in, or absent from" other reports,[122] running afoul of requirements for thorough scientific assessment. Relatedly, rather than comprehensive analysis, the authors focused selectively on a limited number of studies (including many of their own), creating bias against foundational climate research and established scientific understanding.

- The DOE report's methodology is in marked contrast to the scientifically sound approach that supports mainstream scientific assessment reports on the topic. Assessment reports are a rigorous form of scientific report that undergo an exacting standard of peer review by the expert community, as well as thorough levels of U.S. government review and acceptance. The Intergovernmental Panel on Climate Change's latest assessment report meets these exacting standards and had, until the DOE report, been considered by the federal government as an authoritative scientific assessment on the harms from climate change.[123] It concludes with a high degree of confidence that "[h]uman-caused climate change is already affecting many weather and climate extremes in every region across the

[119] Exec. Order No. 14,303, § 3(a)(ix), 90 Fed. Reg. 22,601, 22,602 (May 23, 2025).

[120] U.S. Dep't of Energy, Climate Working Group, *A Critical Review of Impacts of Greenhouse Gas Emissions on the U.S. Climate* at x (July 23, 2025), https://www.energy.gov/sites/default/files/2025-07/DOE_Critical_Review_of_Impacts_of_GHG_Emissions_on_the_US_Climate_July_2025.pdf (hereinafter, DOE Climate Working Group Report).

[121] 67 Fed. Reg. at 8460.

[122] DOE Climate Working Group Report at x.

[123] EPA, *EPA's Denial of Petitions Relating to the Endangerment and Cause or Contribute Findings for Greenhouse Gasses Under Section 202(a) of the Clean Air Act* at 16-18 (Apr. 2022), https://www.epa.gov/system/files/documents/2022-04/decision_document.pdf.

globe" which "has led to widespread adverse impacts and related losses and damages to nature and people . . . ."[124]

Political Interference. The process by which members of the working group were selected, and the explicit purpose of the working group, run afoul of federal requirements that scientific information meets established objectivity standards and not be driven by predetermined political objectives.

- All five working group members were selected by Secretary Wright himself specifically for their contrarian views on climate science, thereby excluding any scientists with mainstream scientific perspectives.[125] By selecting only these scientists and not including others with diverse views, the working group's composition was unrepresentative of the broader scientific community and expert consensus, disregarding objectivity standards. Further, the working group members are well known for rejecting the overwhelming scientific consensus that human activities are dangerously heating the earth through fossil fuel emissions. For example, Dr. Koonin, Dr. Christy, and Dr. Spencer all have institutional affiliations with organizations that actively promote climate skepticism, contrary to established scientific understanding.[126]

- Secretary Wright explicitly commissioned the report to provide an alternative to the consensus views of climate scientists and undermine the prevailing narrative that climate change is an existential threat,[127] violating requirements for objective scientific assessment and demonstrating from the outset that the report was designed to highlight fringe, results-oriented views.

- That the report's publication "was delayed to coincide with the release of EPA's proposal"[128] to rescind the endangerment finding only further demonstrates the coordination between supposedly independent scientific assessment and predetermined policy objectives.

Violations of the Federal Advisory Committee Act (FACA). The Climate Working Group meets the statutory definition of an "[a]dvisory committee" as it was "established or utilized to obtain advice or recommendations for . . . one or more agencies or officers of the Federal Government," and is not "composed wholly of full-time, or permanent part-time, officers

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[124] Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report Summary for Policymakers* 5 (P. Arias et al. eds., 2023), https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf.

[125] DOE Climate Working Group Report at viii.

[126] Maxine Joselow, *Trump Hires Scientists Who Doubt the Consensus on Climate Change*, N.Y. Times (July 8, 2025), https://www.nytimes.com/2025/07/08/climate/trump-climate-energy-department.html.

[127] DOE Climate Working Group Report at viii.

[128] Benjamin Storrow, *How Chris Wright Recruited a Team to Upend Climate Science*, E&E News (Aug. 11, 2025), https://perma.cc/TNJ5-J4M4.

or employees of the Federal Government."[129] Because FACA applies, DOE was required—but did not—adhere to FACA's requirements. A full recounting of the legal errors is addressed in the lawsuit seeking DOE compliance,[130] where the judge has summarily rejected the government's argument that the Working Group should not be subject to FACA.[131] Critical errors include the following. [C-1, C-2, C-23, C-27]

- DOE failed to comply with FACA's numerous procedural requirements. DOE did not file a Federal Register notice announcing the creation of the group.[132] DOE also violated multiple of FACA's records requirements.[133]

- Moreover, and more critically, by selecting only climate science contrarians, DOE violated federal requirements to ensure a "fair balance" on federal advisory committees. DOE failed to submit to the General Services Administration its "plan to attain fairly balanced membership" in the working group.[134]

- DOE did not conduct required outreach to interested parties and stakeholders.[135] DOE compounded these violations by failing to provide notice that would have allowed interested members of the public to attend the working group's meetings.[136]

C. The numerous federal statutory and regulatory violations undermine confidence in DOE's conclusions and establish that the report should not be considered.

The departure from established scientific methodology yields unreliable results that do not satisfy accepted standards for data quality and scientific rigor and that do not withstand scrutiny. As a result of its reliance on the draft DOE Climate Working Group report, EPA reaches conclusions that are contrary to the widely-held scientific consensus that greenhouse gas emissions endanger public health and welfare.[137]

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[129] 5 U.S.C. § 1001(2)(A), (B)(i).

[130] Complaint, *Env't Def. Fund v. Wright*, No. 1:25-cv-12249 (D. Mass. Aug. 12, 2025), Dkt. No. 1.

[131] Order at 5-10, *Env't Def. Fund v. Wright*, No. 1:25-cv-12249 (D. Mass. Sept. 17, 2025), Dkt. No. 57.

[132] 41 C.F.R. § 102-3.65(a).

[133] *See, e.g.*, 5 U.S.C. § 1009(b)-(c); 41 C.F.R. § 102-3.165(b)-(c).

[134] 41 C.F.R. § 102-3.60(b)(3).

[135] 41 C.F.R. § 102-3.60(b)(3)(ii).

[136] 5 U.S.C. § 1009(a)(1)-(3); 41 C.F.R. § 102-3.150(a).

[137] *See generally* National Academies of Science, Engineering, and Medicine, *Effects of Human-Caused Greenhouse Gas Emissions on U.S. Climate, Health, and Welfare* (2025), https://nap.nationalacademies.org/catalog/29239/effects-of-human-caused-greenhouse-gas-emissions-on-us-climate-health-and-welfare.

EPA's reliance on the draft DOE report also creates regulatory uncertainty and imposes significant costs on industry, which invests billions of dollars annually based on the predictability of federal standards. When scientific assessments deviate from proven methodologies, they erode the stability that serves as the foundation for long-term business planning and investment decisions, frustrating companies' ability to operate effectively both domestically and internationally. This uncertainty ultimately threatens both innovation and compliance efforts that depend on consistent, scientifically sound regulatory frameworks.

The DOE Climate Working Group report represents a systematic violation of federal data quality and scientific integrity standards, as well as legal requirements for advisory committees. Its use in regulatory decision-making would undermine the legal foundations for agency scientific determinations, create regulatory uncertainty, and damage public trust in government science. For these reasons, EPA should not rely on this report in any respect in its reconsideration of the 2009 Clean Air Act endangerment finding and greenhouse gas vehicle standards. To do so would be arbitrary and capricious.[138]

This conclusion is further reinforced by the fact that the Working Group has now disbanded and never considered the numerous critical comments of its methodology and approach.[139] Should EPA attempt now to conclude scientific uncertainty is a basis to reconsider the endangerment finding, and also disclaim reliance on the draft DOE report, that too would be arbitrary and capricious. The agency cannot change its principal source of purported scientific support when finalizing the rule; it would instead have to re-propose the rule. And, in any event, apart from the deeply flawed draft DOE report, EPA does not have anything resembling scientific evidence in support of its proposal. [C-1, C-2, C-23, C-27]

III. EPA's Separate Bases for Repealing GHG Emission Standards Are Likewise Arbitrary and Capricious.

EPA's alternative justifications for repealing GHG emission standards are equally flawed. EPA argues that because vehicle emission regulations cannot singlehandedly abate all global GHG emissions and thus cannot represent a single solution to the risks presented by climate change in light of emissions from other sources, they should not exist at all. Courts have repeatedly rejected this all-or-nothing reasoning, which contradicts the statutory mandate that EPA regulate any air pollutant that "contributes to" public harm. EPA also ignores basic climate

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[138] *Ergon-W. Va., Inc.*, 980 F.3d at 610–11 ("Therefore, instead of determining whether the DOE's Report is arbitrary and capricious, we may consider only whether the EPA's reliance on the DOE's Report is arbitrary and capricious."); *see also Dow AgroSciences LLC v. Nat'l Marine Fisheries Serv.*, 637 F.3d 259, 266–67 (4th Cir. 2011) ("When a court of appeals reviews the *EPA's reliance* on a [report issued by another agency], it would determine only whether the EPA's reliance was arbitrary and capricious."); *City of Tacoma v. FERC*, 460 F.3d 53, 75 (D.C. Cir. 2006) ("Accordingly, when we are reviewing the decision of an action agency to rely on [another agency's report], the focus of our review is quite different than when we are reviewing a [report] directly. In the former case, the critical question is whether the action agency's reliance was arbitrary and capricious, not whether the [report] itself is somehow flawed." (citations omitted)).

[139] EPA also appears to rely on the possibility that some aspects of the technical support document (TSD) for the 2009 endangerment finding might have been inaccurate. *See* 90 Fed. Reg. at 36,296 ("There may also be as-yet-unidentified issues or discrepancies present in the underlying TSD and scientific justifications offered in the Endangerment Finding."). Conjecture does not provide a basis to overturn the endangerment finding.

science: increased GHG concentrations heighten the risk of public harm, while decreased emissions reduce it. In addition, the Agency wrongly dismisses the substantial investment in and widespread adoption of electrification technology—a proven, commercially viable solution that significantly reduces GHG emissions. When EPA does address electrification advances, it relies on outdated assumptions about costs and limitations that no longer reflect market realities.

A. Reductions in GHG emissions from motor vehicles are meaningful, and existing technology can effectively address GHG pollution from motor vehicles.

EPA proposes repealing GHG emission standards for motor vehicles, even if the endangerment finding stands, because reducing GHG emissions from vehicles "would not measurably impact GHG concentrations in the atmosphere or the rate of global climate change."[140] Like EPA's other arguments, that argument has already been raised and rejected. In *Coalition for Responsible Regulation*, industry petitioners asserted, as EPA does here, that EPA is required to show that proposed regulations "meaningfully mitigate the alleged endangerment."[141] But the D.C. Circuit rejected that argument, explaining that EPA's authority to regulate is not conditioned on evidence of any particular level of mitigation.[142]

EPA's argument is flawed as a factual matter as well. A source category's emissions may adversely affect public health and welfare *even if* other sources emit the same pollutant and *even if* emissions from those other sources are increasing. Whether or not a source's emissions significantly contribute to dangerous air pollution turns on a scientific analysis of the harm created by different concentrations of the pollutant. The proposal includes no such analysis.

With respect to GHGs, emissions reductions in any non-*de minimis* amount are meaningful because climate risk increases with atmospheric concentration of GHGs. It is a dial, not a switch. Just as EPA need not find a minimum threshold of risk or harm before determining endangerment, it also need not meet an absolute level of mitigation for the regulation to be effective under the statute.[143] Indeed, there is ample support for the conclusion that small reductions in greenhouse gases are meaningful.[144] Higher greenhouse gas concentrations in the atmosphere produce greater radiative forcing and thus greater increases in global temperatures. As EPA puts it, "an increase in the atmospheric concentrations of greenhouse gases produces a

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[140] 90 Fed. Reg. at 36,311.

[141] 684 F.3d at 127 (citation omitted).

[142] *Id.*

[143] *Cf. id.* at 122-23 (holding that the endangerment inquiry under section 202(a)(1) "necessarily entails a case-by-case, sliding-scale approach to endangerment" because "[d]anger ... is not set by a fixed probability of harm, but rather is composed of reciprocal elements of risk and harm, or probability and severity") (quoting *Ethyl*, 541 F.2d at 18).

[144] *See, e.g.*, National Academies of Science, Engineering, and Medicine, *Effects of Human-Caused Greenhouse Gas Emissions on U.S. Climate, Health, and Welfare* 36 (2025), https://nap.nationalacademies.org/catalog/29239/effects-of-human-caused-greenhouse-gas-emissions-on-us-climate-health-and-welfare.

positive climate forcing, or warming effect."[145] Limiting carbon dioxide emissions from new U.S. motor vehicles will reduce atmospheric greenhouse gas concentrations relative to what they would be without those standards, thereby reducing radiative forcing, even if other countries continue to increase their emissions. It is "[not] dispositive that developing countries such as China and India are poised to increase greenhouse gas emissions substantially over the next century: A reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere."[146]

The impact of additional emissions *increases* as global greenhouse gas concentrations rise. Research has consistently demonstrated that it is a "well-known empirical fact that the total forcing from carbon dioxide scales as the logarithm of its concentration,"[147] meaning that the warming impact of each incremental increase in greenhouse gases grows as atmospheric concentrations of such pollution increase. This phenomenon has been recognized for many years,[148] and was reconfirmed as recently as November 2023 in a paper published in *Science*. According to this study, radiative forcing from carbon dioxide emissions "is not constant, but rather depends on the climatological base state, increasing by about 25% for every doubling of carbon dioxide, and has increased by about 10% since the preindustrial era primarily due to the cooling within the upper stratosphere, implying a proportionate increase in climate sensitivity" and resulting in non-linear increases in global surface temperatures.[149]

Put differently, each additional ton of greenhouse gas emissions will cause greater damage in terms of the warming it produces. EPA's assumption is therefore precisely backwards: by adding to total global concentrations of greenhouse gases, greater emissions from other countries will *increase*, rather than decrease, the radiative forcing impact resulting from a given quantity of emissions from U.S. power plants, even if the percentage contribution is indeed lower.

Further, the U.S. transportation sector contributes a meaningful amount to global emissions—*i.e.*, it is not a "de minimis" source of GHGs. The transportation sector has recently been the largest contributor of any sector to U.S. anthropogenic GHG emissions.[150] As with most pollutants, no single economic sector within a country accounts for an especially large

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[145] *Climate Change Indicators: Greenhouse Gases*, EPA, https://www.epa.gov/climate-indicators/greenhouse-gases (last updated Aug. 1, 2025).

[146] *Massachusetts*, 549 U.S. at 525-26.

[147] David M. Romps et al., *Why the Forcing from Carbon Dioxide Scales as the Logarithm of Its Concentration*, 35 J. Climate 4027, 4045 (2022), https://journals.ametsoc.org/view/journals/clim/35/13/JCLI-D-21-0275.1.xml.

[148] *Id.* at 4027 (citing other papers).

[149] Haozhe He et al., *State Dependence of CO_2 Forcing and Its Implications for Climate Sensitivity*, 382 Science 1051 (quote from abstract) (2023), https://www.science.org/doi/10.1126/science.abq6872.

[150] *See Fast Facts on Transportation Greenhouse Gas Emissions*, EPA, https://www.epa.gov/greenvehicles/fast-facts-transportation-greenhouse-gas-emissions (last updated June 6, 2025) (transportation sector accounted for 28% of U.S. GHG emissions in 2022); Hannah Ritchie et al., *Greenhouse Gas Emissions*, Our World in Data (last updated Jan. 2024), https://ourworldindata.org/greenhouse-gas-emissions (showing that U.S. emissions in 2022 totaled 6.07 billion tons out of 53.27 billion tons globally, or approximately 11% percent).

percentage of total global emissions.[151] Put in that context, the U.S. transportation sector represents a meaningful share of global emissions.

In part because small reductions are meaningful, requisite technology exists to address GHG emissions from motor vehicles. In concluding otherwise, EPA misreads the statutory text and undersells the effectiveness of vehicle electrification, as well as of improvements in fuel economy, plug-in hybrid electric vehicles (PHEVs), and hybrid electric vehicles (HEVs).

As a statutory matter, EPA is wrong that a technology to address GHG pollution would be sufficient only if it removed GHGs from the atmosphere.[152] This argument was addressed and rejected by the Supreme Court in *Massachusetts* and again by the D.C. Circuit in *Coalition for Responsible Regulation*. The *Massachusetts* Court explained that agencies "do not generally resolve massive problems in one fell regulatory swoop" but rather "whittle away at them over time."[153] It thus concluded that EPA could not decline to regulate simply because the solution might be "piecemeal."[154] In other words, a "requisite technology" does not need to scrub existing pollutants from the atmosphere to mitigate harm under the statute. Or, as the D.C. Circuit recognized, the fact that currently available solutions may be "less-than-perfect[]" is no reason under the statute to abandon regulation.[155]

Moreover, the CAA does not permit EPA to abandon a problem altogether if technology to solve the problem wholesale does not yet exist. Rather, the CAA requires the EPA to project future advances in pollution control capabilities and to push for the development and application of improved technologies rather than being limited by existing ones.[156] Section 202(a) thus mandates the EPA to prescribe standards that achieve the greatest degree of emission reduction achievable through the application of technology that the Administrator determines will be available within the given timeframe.[157]

Further, EPA's proposal ignores the effectiveness and success of vehicle electrification technology.[158] Vehicle electrification is the most effective emissions reduction approach for

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[151] *See* 74 Fed. Reg. at 66,538 ("[N]o single country or source category dominates or comes close to dominating the global inventory of greenhouse gas emissions.").

[152] *See* 90 Fed. Reg. at 36,311 ("To qualify as a 'requisite technology' with any measurable impact on the identified danger, an engine design or device would need to remove GHGs already present in the atmosphere and would no longer qualify as an emission standard for the new motor vehicle or motor vehicle engine.").

[153] 549 U.S. at 524.

[154] *Id.* at 533.

[155] *Coal. for Responsible Regul.*, 684 F.3d at 119.

[156] *Nat. Res. Def. Council v. EPA*, 655 F.2d 318, 328 (D.C. Cir. 1981).

[157] *Bluewater Network*, 370 F.3d at 20.

[158] EPA's failure to recognize the effectiveness of emissions control technologies is especially striking in light of EPA's own Automotive Trends Report, which documents the automotive industry's remarkable track record of emissions reductions. *See generally* EPA, *The 2024 EPA Automotive Trends Report: Greenhouse Gas Emissions,*

motor vehicle emissions. Because electric vehicles produce zero tailpipe emissions, increased electrification is the best pathway available to "the maximum emissions reduction achievable."[159] Electric vehicle technology has seen widespread adoption with sustained and substantial growth over multiple years, demonstrating that this shift represents a fundamental market transformation rather than a recent fad. From 2020 to 2022, Consumer Reports found that there was a 350% increase in consumer demand for EVs.[160] Between 2017 and 2022, EV registrations increased 45 percent annually.[161] And interest remains high: a 2025 study found that nearly 60% of Americans are at least somewhat likely to consider purchasing an electric vehicle.[162] While not everyone who considers an EV purchases one, EV purchasers nonetheless comprise an increasing share of the sales market, and therefore an increasing share of the national fleet. As of 2024, electric vehicle sales account for 10% of U.S. vehicle sales, up from 2% in 2020.[163] Retention is also very high: Over three-quarters of current EV owners plan to buy an EV again for their next vehicle purchase.[164]

All that said, additional vehicle electrification beyond current sales rates is not necessary for achieving the current fleet average standards set pursuant to the endangerment finding.[165] The current regulations "are not a mandate for a specific type of technology" and "do not legally or de facto require a manufacturer to follow a specific technological pathway to comply."[166] In fact, EPA has demonstrated the feasibility of compliance with the final MY27-32 standards without any additional EV sales "beyond the volumes already sold today."[167] While many manufacturers will surely find that vehicle electrification is a cost-effective technology lever to pull, it is not necessary. Fuel economy standards can be met through other methods, such as hybridization,

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Fuel Economy, and Technology Since 1975, EPA-420-R-022 (Nov. 2024), https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P101CUU6.pdf.

[159] *Bluewater Network*, 370 F.3d at 20.

[160] Chris Harto, *Excess Demand - The Looming EV Shortage*, Consumer Reports (Mar. 2023), https://advocacy.consumerreports.org/wp-content/uploads/2023/03/Excess-Demand-The-Looming-EV-Shortage.pdf.

[161] Natascha Buresch et al., *Will Today's Environment Affect Vehicle Purchase Decisions for US Consumers?*, McKinsey & Co. (Dec. 6, 2023), https://www.mckinsey.com/industries/automotive-and-assembly/our-insights/will-todays-environment-affect-vehicle-purchase-decisions-for-us-consumers.

[162] Press Release, J.D. Power, *EV Purchase Consideration Holds Steady Amid Market Uncertainty, J.D. Power Finds* (May 15, 2025), https://www.jdpower.com/business/press-releases/2025-us-electric-vehicle-consideration-evc-study.

[163] *Global EV Data Explorer*, IEA, https://www.iea.org/data-and-statistics/data-tools/global-ev-data-explorer (last updated July 31, 2025).

[164] Patrick Hertzke et al., *New Twists in the Electric-Vehicle Transition: A Consumer Perspective*, McKinsey & Co. at 6-7 & Ex. 4 (Apr. 22, 2025), https://www.mckinsey.com/features/mckinsey-center-for-future-mobility/our-insights/new-twists-in-the-electric-vehicle-transition-a-consumer-perspective#/.

[165] EPA has previously recognized as much. *See* 89 Fed. Reg. at 27,845 (finding that it would be technologically feasible to meet MY2027-2032 standards "without additional zero-emission vehicles beyond the volumes already sold today").

[166] 89 Fed. Reg. at 27,896.

[167] *Id.* at 27,845.

downsized turbo-charged engines, cylinder deactivation, stop-start ignition systems, and more. And those non-electrification emissions reduction methods can be highly effective in reducing emissions,[168] and are not yet at full or even majority utilization across the current fleet.[169] [C-1, C-2, C-12, C-16, C-17, C-19, C-20, C-21, C-23, C-25, C-27]

B. EPA's assumptions about EV costs and vehicle turnover are fundamentally flawed, such that there is no support for the conclusion that GHG rules harm public health and welfare.

EPA asserts that retaining GHG emission standards will result in more expensive vehicles and prolong the presence of less efficient vehicles on roads.[170] That analysis rests on outdated assumptions and fails to account for current market realities. Multiple authoritative sources demonstrate that electric vehicles already achieve cost parity with conventional vehicles on a total cost of ownership basis, negating EPA's cost and turnover concerns.

a. The proposal's conclusions regarding cost and vehicle turnover are conclusory and lack adequate evidentiary support.

At the outset, the proposal's conclusions about EV costs and vehicle turnover are unsupported even on their own terms.[171] The proposal relies only on the record and analysis for the 2020 motor vehicle rules; it does not conduct its own, updated analysis.[172] Nor does EPA attempt to explain why the Agency's conclusions from 2020 (which were contested at that time, and never upheld by any court) represent current market conditions.[173] This omission is fatal.

Even assuming the 2020 rule's conclusions were correct at the time, EPA's analysis would still be problematic because new tariffs instituted by the Administration over the past year have fundamentally changed market dynamics. The Agency has not considered the price impacts of the tariffs, and how these tariffs might influence the cost of new vehicles and consumer behavior:

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[168] *See generally* EPA, *The 2024 EPA Automotive Trends Report: Greenhouse Gas Emissions, Fuel Economy, and Technology Since 1975*, EPA-420-R-022 (Nov. 2024), https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P101CUU6.pdf; Felix Leach et al., *The Scope for Improving the Efficiency and Environmental Impact of Internal Combustion Engines*, 1 Transp. Eng'g 100005 (2020), https://www.sciencedirect.com/science/article/pii/S2666691X20300063.

[169] EPA, *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles: Draft Regulatory Impact Analysis*, EPA-420-D-23-003, at 3-1–3-6 (Apr. 2023).

[170] *See* 90 Fed. Reg. at 36,312.

[171] *See id.* at 36,312-13.

[172] *Id*. at 36,312-13 nn.109-112 (citing 85 Fed. Reg. at 24,186, 24,626, 25,039).

[173] *See id*.

- For example, Toyota is consolidating U.S. plants as a result of the high cost of tariffs[174] and has already announced an effective $5,000 price increase for the Toyota Highlander.[175]

- A study by Rice University highlighted billions of dollars in tariff losses by GM and Stellantis and concluded that, as a result of the tariffs, the average cost of cars is likely to increase by $5,000.[176]

- Kelley Blue Book has stated that tariffs will increase car prices by as much as $6,000 (on vehicles with an MSRP under $40,000).[177]

b. Current evidence does not support EPA's conclusions on cost and vehicle turnover.

Recent research demonstrates that electric vehicles already achieve cost parity or savings compared to conventional vehicles. Electric vehicle costs are also continuing to drop as technology improves.

- MIT's Carbon Counter provides lifecycle emissions analysis and total cost of ownership comparisons by vehicle make and model.[178] For example, a 2020 Tesla Model 3 has lower lifecycle emissions and has a less expensive total cost of ownership than comparable vehicles including the Toyota Camry, Jeep Renegade, Mazda MX5, and Subaru Outback, even without federal tax incentives. These savings transfer to subsequent owners when vehicles are resold.

- Battery electric vehicles with up to 300 miles of range are this year projected to have lower six-year ownership costs than comparable gasoline models across all light-duty vehicle classes. Direct price parity is projected between 2024-2026 for 150-200 mile range EVs, 2027-2029 for 250-300 mile range EVs, and 2029-2033

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[174] Azusa Kawakami, *Toyota to Consolidate Lexus Production in US, Boost Hybrid Output*, Nikkei Asia (Sept. 10, 2025), https://asia.nikkei.com/business/automobiles/toyota-to-consolidate-lexus-production-in-us-boost-hybrid-output.

[175] Joey Capparella, *2026 Toyota Highlander Starts $5000 Higher, FWD Models Dropped*, Car & Driver (Sept. 5, 2025), https://www.caranddriver.com/news/a65997224/2026-toyota-highlander-price/.

[176] Sydney Jackson, *Trump's Tariffs Likely Will Lead to Rise in Car Prices, Rice University Economist Says*, Hou. Pub. Media (Sept. 8, 2025), https://www.houstonpublicmedia.org/articles/economy/2025/09/08/530309/trumps-tariffs-likely-will-lead-to-rise-in-car-prices-rice-university-economist-says/.

[177] *See generally The Latest Car Tariff Information*, Kelley Blue Book (Sept. 15, 2025), https://www.kbb.com/tariffs/.

[178] Marco Miotti et al., *Carbon Counter*, MIT Trancik Lab, https://www.carboncounter.com (last visited Sept. 19, 2025); *Global EV Outlook 2025: Trends in Electric Car Affordability*, IEA (2025), https://www.iea.org/reports/global-ev-outlook-2025/trends-in-electric-car-affordability.

for 350-400 mile range EVs.[179] Battery prices are projected to fall to $80/kWh by 2026, representing a 50% decrease from 2023 levels and achieving unsubsidized ownership cost parity with gasoline vehicles.[180]

Next, even if the existing rules did increase prices, it does not follow that people will not buy new vehicles but will instead drive old, used vehicles. Among other reasons, vehicles have a typical on-road lifespan: when replaced by an original owner the vehicle will continue on-road in some form in the re-sale market. Moreover, research indicates that the overwhelming majority of new vehicle buyers are highly motivated to purchase new vehicles even when their preferred model is unavailable or more expensive, rather than switching to the used vehicle market.[181] And even if consumers defer new vehicle purchases, demand then shifts to the secondhand market and drives up used vehicle prices, potentially reducing overall vehicle ownership rather than simply aging the fleet.

The net effect on emissions and safety cannot be determined without detailed modeling that accounts for these market interactions. EPA's assumption that reduced new vehicle sales automatically translates to increased emissions ignores the possibility that higher prices for both new and used vehicles may reduce vehicle ownership and total vehicle miles traveled. While the fleet's average age might increase, the fleet's size might decrease, making the net effect on emissions and safety ambiguous without more sophisticated analysis.

Furthermore, conventional assumptions about trade-offs between fuel economy and performance do not apply in the EV context. EVs often provide superior performance characteristics—including better acceleration and more storage—alongside improved efficiency and reliability, potentially altering traditional consumer preference models that EPA relies upon in its analysis. To take but one example, reliability numbers have significantly improved: The latest EVs are now expected to outlast the average internal combustion engine (ICE) vehicles within the same cohort.[182]

EPA previously documented extensive data regarding electric vehicle cost advantages in prior rulemakings, undermining the agency's current position.[183] The Agency's sudden reversal

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[179] Peter Slowik et al., *Assessment of Light-Duty Electric Vehicle Costs and Consumer Benefits in the United States in the 2022–2035 Time Frame*, Int'l Council on Clean Transp. (Oct. 2022), https://theicct.org/publication/ev-cost-benefits-2035-oct22/.

[180] *Electric Vehicle Battery Prices Are Expected to Fall Almost 50 Percent by 2026*, Goldman Sachs (2024), https://www.goldmansachs.com/insights/articles/electric-vehicle-battery-prices-are-expected-to-fall-almost-50-percent-by-2025.

[181] Benjamin Leard, *The Effect of Fuel Economy Standards on New Vehicle Sales*, Resources (Feb. 11, 2019), https://www.resources.org/common-resources/effect-fuel-economy-standards-new-vehicle-sales/.

[182] *See generally* Viet Nguyen-Tien et al., *The Closing Longevity Gap Between Battery Electric Vehicles and Internal Combustion Vehicles in Great Britain*, 10 Nature Energy 354 (2025), https://www.nature.com/articles/s41560-024-01698-1.

[183] *See, e.g.*, EPA, *Regulatory Impact Analysis: Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles*, EPA-420-R-24-004, at 9-3 to 9-6 (Mar. 2024) (consumer benefits analysis).

of well-established economic analysis without adequate justification violates the basic principles of reasoned decision-making required under administrative law. [C-1, C-2, C-12, C-13, C-14, C-15, C-19, C-20, C-21, C-25, C-27]

IV. Repealing The Endangerment Finding and Resulting GHG Emission Standards Will Disturb ZETA's Longstanding Reliance on the Existing Regulatory Program.

EPA's proposal fails to account for ZETA's and its members' longstanding reliance interests. The Agency must provide a detailed justification for a change in policy "when its prior policy has engendered serious reliance interests that must be taken into account."[184] In particular, EPA is "required to assess whether there [are] reliance interests, determine whether they [are] significant, and weigh any such interests against competing policy concerns."[185]

EPA's endangerment finding and resulting GHG emission standards, as well as judicial approval of EPA's authority to impose such regulations, have provided a stable regulatory backdrop for nearly 20 years. While the stringency of GHG emissions standards has varied across presidential administrations, federal authority to regulate GHGs has been a constant. Vehicle electrification has also been a consistent feature of the federal GHG emissions approach. It has long enjoyed support from Congress,[186] and the EPA has appropriately considered electric vehicles in every section 202(a) rulemaking rule since 2000.[187] ZETA members have relied on that federal authority to regulate GHG emissions—and the concomitant support for vehicle electrification—to make billions of dollars of investment over the last two decades.[188]

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[184] *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

[185] *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 33 (2020).

[186] *See, e.g.*, 15 U.S.C. § 2501; 42 U.S.C. § 7404(a)(2)(B); Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. No. 94–413, 90 Stat. 1260; S. Rep. No. 90-403, at 59 (1967) ("Federal research into batteries, fuel cells, electrical vehicular systems, and other alternative propulsion systems is producing significant results."); *see also* Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. at 1954-64, 1971-81, 2044, 2086-87 (dedicating billions of dollars to further electrify the national fleet).

[187] Criteria-pollutant Tier 2 standards (model-year 2004 and later), Control of Air Pollution From New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements, 65 Fed. Reg. 6698 (Feb. 10, 2000); Heavy-duty criteria-pollutant standards (model-year 2004 and later), Control of Emissions of Air Pollution from 2004 and Later Model Year Heavy-Duty Highway Engines and Vehicles; Revision of Light-Duty On-Board Diagnostics Requirements, 65 Fed. Reg. 59,896 (Oct. 6, 2000); Light-duty greenhouse-gas standards (model-year 2012 and later), 75 Fed. Reg. 25,324; 76 Fed. Reg. 57,106; Light-duty greenhouse-gas standards (model-year 2017 and later), 77 Fed. Reg. 62,624; Criteria-pollutant Tier 3 standards (model-year 2017 and later), Control of Air Pollution From Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards, 79 Fed. Reg. 23,414 (Apr. 28, 2014); Heavy-duty greenhouse-gas standards (model-year 2021 and later), 81 Fed. Reg. 73,478; Light-duty greenhouse-gas standards (model-year 2021 and later), 85 Fed. Reg. 24,174; Light-duty greenhouse-gas standards (model-year 2023 and later), 86 Fed. Reg. 74,434; Light- and medium-duty greenhouse gas and criteria-pollutant standards (model-year 2027 and later), 89 Fed. Reg. 27,842.

[188] For more information on ZETA members' reliance interests, see the Appendix (App.) attached hereto.

A. ZETA's members have invested billions of dollars in EV manufacturing and development in reliance on the existing regulatory framework.

In reliance on judicially approved federal regulation of GHG emissions, ZETA members have made billions of dollars in manufacturing and other investments. Indeed, since 2020, ZETA members in the EV, battery, and critical mineral and materials sectors have announced over $55 billion in private sector investments that are projected to yield nearly 70,000 direct jobs in the years ahead.[189] By way of illustration:

- ZETA members have built EV factories across the U.S.[190] For example, Rivian has recently expanded its factory in Normal, Illinois, for a maximum capacity of 215,000 units annually, and has broken ground on a Georgia facility that will one day make as many as 400,000 vehicles per year.[191] Meanwhile, Lucid's factory in Casa Grande, Arizona, is the first greenfield—or purpose-built—EV factory in North America and currently has the capacity to build 90,000 EVs annually, with potential expansion for more in the future.[192]

- ZETA members operate, are constructing, and/or have planned several U.S. battery factories.[193] When operational at full capacity, those factories will employ over 10,000 workers. Such battery production and employment are dependent on EV market strength, which is in turn tied to GHG emission standards.

- Other ZETA members are charging network providers who have invested substantial private funding into the manufacturing, installation, operation, and maintenance of chargers nationwide.[194] By way of illustration, Tesla has invested $20 million to retrofit its Supercharger network and at least $100 million in additional charging capacity to accommodate non-Tesla EVs in the United States. Charging network providers guide their investments based on expected charging utilization rates as a result of estimated adoption rates of electric vehicles. Rescinding the endangerment finding is expected to reduce adoption rates of electric vehicles nationwide, therefore reducing expected utilization of charging

[189] ZETA estimates based on Atlas Public Policy, Clean Economy Tracker, https://cleaneconomytracker.org/about/ (last visited Sept. 19, 2025).

[190] *See* Decl. ¶ 7.

[191] *See* App. 424-430.

[192] *See* Decl. ¶ 7.

[193] *See id.* ¶ 8. For more information on battery investments by ZETA members, *see generally* App. 431-519; *see also id.* at 432, 432-434, 442, 480, 484 (describing surging North America EV battery demand and investment in the automotive battery business in North America, including gigafactory in Sparks, Nevada, and new $4 billion, 4.7 million-square-foot factory in Kansas, anticipated to create up to 4,000 U.S.-based jobs); *id.* at 500 (noting uncertain U.S. demand for batteries "due to loosened CO2 regulations, repealed subsidy, and tariffs"); *id.* at 507 (discussing breaking ground on battery joint venture); *id.* at 511-12 (announcing final agreement to establish $3.5 billion EV battery plant in the U.S.); *id.* at 513-514 (announcing joint venture to build a battery plant); *id.* at 515-519 (announcing Kokomo, Indiana site for joint battery venture).

[194] *See* Decl. ¶ 9.

infrastructure and ultimately revenue generation potential of past and future investments made by charging providers.

- ZETA members have also made substantial long-term investments in the mining sector.[195] ZETA represents U.S. producers and processors of lithium carbonate and hydroxide, including the sole active domestic lithium project in the U.S.; the sole U.S. primary cobalt project; two U.S. graphite companies, including the only company in the U.S. planning to mine and process natural graphite; two U.S. copper projects, one of which will also be a major nickel producer, as well as a copper-specific industry coalition. These projects require significant capital commitments to develop mining operations, build supporting infrastructure, and more, and are premised on established regulatory frameworks. Moreover, many of those projects have commitments to purchase with battery and vehicle manufacturers, which are also dependent on existing regulatory frameworks for motor vehicles.

- Tesla has also invested in new refrigerant systems.[196] Until 2019, the air conditioning systems in Tesla vehicles used HFC-134a refrigerant, which has significantly higher global warming potential than alternatives. In 2019, however, Tesla recognized that switching to a refrigerant with lower warming potential—specifically, to HFO-1234yf—would generate incremental GHG credits under EPA's Light Duty GHG Emissions Standard, with credit monetization offsetting the additional supply chain costs. Tesla has since invested tens of millions of dollars to implement more environmentally friendly air conditioning systems.

ZETA members require regulatory predictability for informed investment decisions. The automotive industry typically operates on 3–5-year product plans based on federal, state, and international standards. Dramatic regulatory shifts between administrations—particularly retroactive scientific reinterpretations that disregard existing business commitments—create substantial marketplace uncertainty that undermines long-term strategic planning. Companies need consistent, science-based policies to justify capital allocation. [C-1, C-4, C-5, C-7, C-8, C-19, C-20, C-27]

B. If adopted, the proposed rule would harm ZETA members in myriad ways, none of which EPA adequately addresses.

In addition to threatening the investments ZETA members have made across the EV supply chain,[197] the proposal will have devastating impacts on credit markets, increase total vehicle ownership costs, jeopardize other global emissions standards, and hurt the overseas competitiveness of American-made vehicles and U.S. industry players.

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[195] *See id.* ¶ 10.

[196] *See id.* ¶ 11.

[197] *See supra* at 30-31.

a. The proposal will have devastating impacts on credit markets.

A key feature of the existing greenhouse gas standards is that manufacturers who exceed compliance requirements can generate tradeable credits from their overcompliance, creating a financial incentive for investments in advanced emission-reduction technologies. EV manufacturers have generated billions of dollars in revenue in the regulatory credits market.[198] These credits have played a significant role in the growth of many electric vehicle manufacturers and have given other automakers an option to purchase credits in lieu of incurring fines.

ZETA members currently have approximately $4 billion in contracted GHG credit revenue that has not yet been recognized and that is likely to be nullified if EPA revokes the endangerment finding.[199] Company executives have emphasized the financial importance of these credits in multiple investor communications.[200] The proposed action would eliminate this contracted revenue stream, potentially impacting shareholder value, domestic research and development, U.S. employment opportunities, and export potential for U.S. electric vehicles. Not only this, but the proposed rule further jeopardizes GHG agreements that were negotiated in previous years. As ZETA members indicate in their respective SEC filings, it is customary to negotiate and finalize forward agreements for the purchase and sale of regulatory credits that are recognized and paid for in future periods.[201]

The proposal is also impermissibly retroactive, because by its terms it applies even to those model years that have already been manufactured, for which EV manufacturers have already earned credits.[202] Even where a statute grants an agency authority to regulate, that grant does not "encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms."[203] Here, the Clean Air Act contains no such permission, and so retroactive regulation is invalid.[204] EPA's action would excuse manufacturers from longstanding compliance obligations based on a new legal interpretation, effectively rewarding laggards while

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[198] Coral Davenport & Jack Ewing, *Automakers to Trump: Please Require Us to Sell Electric Vehicles*, N.Y. Times (Nov. 21, 2024), https://www.nytimes.com/2024/11/21/climate/gm-ford-electric-vehicles-trump.html.

[199] *See* Decl. ¶¶ 15-18. For more information on the importance of regulatory credits, see the Appendix. *E.g.*, App. 6, 11, 12, 30, 43, 52-53, 67, 71, 98-99, 129, 249, 271, 283-284, 300, 308, 322, 329, 331, 333, 335-338, 355, 367-68, 371, 376, 389, 407 (ZETA members discussing the revenue generated by the sale of regulatory credits and the materially adverse effect that the loss of this revenue would have on their businesses).

[200] *See* Decl. ¶ 19. For example, during a September 2024 investor presentation, Rivian's CFO stated that regulatory credits are "an important funding source for the business." App. 368. In an April 2025 investor call, the CFO affirmed that "[o]ur assumption is that we will continue to have the benefit of regulatory credits on a go-forward basis." App. 355.

[201] *See, e.g.*, App. 53.

[202] In EPA's summary of the proposal, EPA specifies that "[a]s a result of these proposed changes, motor vehicle and engine manufacturers would no longer have future or current obligations for the measurement, control, or reporting of GHG emissions for any vehicle or engine, *including for previously manufactured MYs*." 90 Fed. Reg. at 36,293.

[203] *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988).

[204] *See id.* at 216.

penalizing those that have already invested in meeting existing requirements. For instance, repeal would change the value for ZETA members' credit contracts that have already been negotiated and finalized, such as for model year 2026. By purporting to destroy the value of those credits, the proposal unlawfully interferes with ZETA members' economic interests.

b. The proposal will increase total vehicle ownership costs, hurting U.S. consumers and industry.

Rescinding the endangerment finding will produce higher ownership costs for U.S. consumers, as GHG emissions standards deliver fuel and maintenance savings that outweigh compliance costs.[205] Electric cars today generally have a lower total cost of ownership.[206] According to one study's projections for 2025, EVs with up to 300 miles of range will have a six-year ownership cost that is less than comparable gasoline models *in every light-duty vehicle class*.[207]

Repealing the endangerment finding could slow electrification—as well as innovation to drive down EV costs—among U.S. manufacturers, thereby increasing ownership costs for consumers. That in turn could depress domestic demand or shift buyers to foreign models optimized for stricter markets.

c. The proposal could jeopardize other global emissions standards and hurt the competitiveness of American-made vehicles overseas.

For years, the U.S. has been a leader in regulating GHG emissions from motor vehicles. Several global emissions programs are directly influenced by U.S. GHG emissions standards, including the U.K., E.U., Canada, New Zealand, Australia, Mexico, and Saudi Arabia. Indeed, in some cases, U.S. emissions standards have been adopted by reference, creating global regulatory interdependencies that extend the reach of domestic policy changes. To take but one example, Canadian standards explicitly reference EPA GHG test procedures and the U.S. Code of Federal Regulations as it relates to light-duty vehicle emissions.[208]

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[205] *See* EPA, *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles: Regulatory Impact Analysis*, EPA-420-R-24-004, at 4-32 to 4-35 (Mar. 2024), https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1019VPM.pdf; *see also* Decl. ¶ 20.

[206] *See Global EV Outlook 2025: Trends in Electric Car Affordability*, IEA 47 (2025), https://www.iea.org/reports/global-ev-outlook-2025/trends-in-electric-car-affordability; *see also* Marco Miotti et al., *Carbon Counter*, MIT Trancik Lab, https://www.carboncounter.com (last visited Sept. 19, 2025); Dan Wilkins & Nick Nigro, *Comparing the Cost of Owning the Most Popular Vehicles in the United States: 2025 Update*, Atlas Pub. Pol'y (June 2025), https://atlaspolicy.com/wp-content/uploads/2025/07/Comparing-the-Cost-of-Owning-the-Most-Popular-Vehicles-in-the-United-States-2025-Update.pdf (noting cost savings of $2,000 to $8,000 over a seven-year period).

[207] Peter Slowik et al., *Assessment of Light-Duty Electric Vehicle Costs and Consumer Benefits in the United States in the 2022-2035 Time Frame*, Int'l Council on Clean Transp. at 31 (Oct. 2022), https://theicct.org/wp-content/uploads/2022/10/ev-cost-benefits-2035-oct22.pdf.

[208] The Canadian Environmental Protection Act, 1999 Section 153(3) explicitly references EPA GHG test procedures and U.S. C.F.R. provisions for light-duty vehicles. Canada has directly referenced EPA rules and certifications/tests within its Passenger Automobile and Light Truck Emission Regulation. *See* Passenger Automobile and Light Truck Greenhouse Gas Emission Regulations, SOR/2010-201 (Can.), https://laws-

The repeal of the endangerment finding and resulting GHG emissions standards could jeopardize global emissions standards that were influenced by U.S. standards. In Canada, for example, a U.S. repeal could render Canada's regulatory framework inoperable, potentially increasing global GHG emissions or at minimum creating regulatory uncertainty. Such shifts in global standards could have significant impacts on U.S. manufacturers: Approximately 40% of U.S. vehicle exports go to Canada alone (representing purchase volumes comparable to California).

Even if global emissions standards remain unaffected, repeal will add cost, risk, and fragmentation for U.S. companies, hurting their competitive position vis-à-vis other manufacturers. Historically, U.S. automakers have often been able to manufacture vehicles that comply with U.S. GHG standards and then export many of those same (or highly similar) vehicles overseas, knowing that they will generally comply with international emissions standards.[209] But with the U.S. no longer acting as a global leader on GHG emissions regulations, automakers will be subject to a global patchwork of regulation,[210] requiring complex product-planning and homologation processes, dual powertrain strategies, inventory splits, and compliance engineering—all of which raise unit costs and introduce significant risk and complexity.[211]

In fact, one possible result of EPA's proposal, if finalized, is a tripartite regulatory landscape just in North America. Absent EPA leadership, California, Canada, and the United States may each impose substantially different GHG standards (or more accurately in the case of the U.S. EPA, none at all), requiring automakers to plan for, certify to, and satisfy three parallel

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lois.justice.gc.ca/eng/regulations/sor-2010-201/index.html. Canadian compliance equivalence for U.S.-manufactured vehicles relies heavily on EPA certification, with 40 C.F.R. Part 86 directly referenced for current model years. *See id.* at ss. 11-12 (Can.). The CFR is referenced throughout the Canadian regulation in reference to vehicle types and standards. *See generally* On-Road Vehicle and Engine Emission Regulations, SOR/2003-2 (Can.), https://laws-lois.justice.gc.ca/eng/regulations/sor-2003-2/index.html.

[209] *See* Decl. ¶ 21.

[210] To take but a few examples, the EU has binding fleet CO_2 targets that will continue ratcheting up through 2030 to 0 g/km for new cars in 2035, with €95 per g/km per car fines for shortfalls; the U.K. has ZEV sales mandates that rise steeply to 2030/2035 for every brand selling in Britain; China's Corporate Average Fuel Consumption/New Energy Vehicle "dual-credit" scheme compels rising New Energy Vehicle shares (28% credits in 2024, 38% in 2025); Canada requires all light-duty vehicles to be zero-emission vehicles by 2035, with annual delivery obligations starting in 2026; and Mexico maintains moderately stringent GHG standards through model year 2027 and is exploring extending these standards with additional stringency. *See* Regulation (EU) 2023/851 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2019/631 as regards strengthening the CO_2 emission performance standards for new passenger cars and new light commercial vehicles in line with the Union's increased climate ambition, 2023 O.J. (L 110) 5, Arts. 1, 8; Road Vehicles (Zero Emission Vehicle) Regulations 2024, S.I. 2024/1 (U.K.); China: New Energy Vehicle (NEV) Policy, https://dieselnet.com/standards/cn/nev.php; Canada's Electric Vehicle Availability Standard (regulated targets for zero-emission vehicles), https://www.canada.ca/en/environment-climate-change/news/2023/12/canadas-electric-vehicle-availability-standard-regulated-targets-for-zero-emission-vehicles.html; *NOM-163-SEMARNAT-SCFI-2023: Light Duty Vehicles C02 Emission Standards*, IEA (last updated Mar. 18, 2024), https://www.iea.org/policies/19146-nom-163-semarnat-scfi-2023-light-duty-vehicles-co2-emission-standards (discussing Mexico's GHG standards).

[211] *See* Decl. ¶ 21.

requirements within North America alone, to say nothing of the challenge of meeting additional standards in major export markets.

Those harms are further compounded by the uncertainty in U.S. policy. While global markets are advancing steadily toward vehicle electrification, U.S. policy oscillates unpredictably between support and opposition. This regulatory instability undermines American manufacturers' competitiveness by forcing them to navigate shifting compliance frameworks that disconnect them from international market requirements. Major export markets—including the European Union, China, and other key economies—mandate specific emission standards and electrification targets that require sustained investment in EV and low-emission vehicle technologies. Historically, the U.S. did too. That kind and degree of investment will be difficult to sustain in the U.S. without stable, world-leading GHG emissions standards. The proposed repeal will therefore put American automakers at a policy-driven competitive disadvantage, leaving American companies to compete primarily in a domestic market while foreign competitors dominate the expanding global clean vehicle sector. These uncertainties are already slowing U.S. EV development and increasing global compliance complexity precisely as international competition accelerates toward inevitable fleet electrification.[212]

The adverse impacts are further amplified by EPA's decision to apply regulatory changes retroactively to all model years, including vehicles already in production or nearing completion of manufacturing cycles prior to any final rule's effective date.[213] These concerns are compounded by recent modifications to CAFE standards and the California waiver program, which have created regulatory gaps in federal greenhouse gas efficiency requirements for the automotive sector.[214] This regulatory uncertainty places United States manufacturers at a competitive disadvantage compared to international markets operating under more stable regulatory frameworks.

d. The proposal could also hurt the competitiveness of U.S. industry beyond EV manufacturers.

The U.S. battery industry will likely suffer from repeal of the endangerment finding.[215] Batteries serve crucial national security purposes, with the Department of Defense procuring batteries for wearables, drones, and other applications. Yet the U.S. battery industry significantly lags behind Asia where China produces over 6,000 GWh compared to the United States'

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[212] At minimum, certification processes and test procedures relied upon for other U.S. or international GHG reduction goals should be maintained; otherwise, economic and environmental ramifications will extend beyond U.S. borders with disruptive consequences for manufacturers.

[213] EPA recognizes that it is disruptive to change standards midstream. It then asserts that "adequate regulatory tools" exist to address these concerns, 90 Fed. Reg. at 36,297, but does not explain what tools are available or why they are sufficient. More is needed to meet the *Fox* standard for reasoned decisionmaking.

[214] *See Resetting the Corporate Average Fuel Economy Program*, 90 Fed. Reg. 24,518 (June 11, 2025) (providing new interpretation of NHTSA's authority to promulgate CAFE standards); *see also* H.R.J. Res. 87, Pub. L. No. 119-15, 139 Stat. 65 (2025); H.R.J. Res. 88, Pub. L. No. 119-16, 139 Stat. 66 (2025); H.R.J. Res. 89, Pub. L. No. 119-17, 139 Stat. 67 (2025).

[215] *See* Decl. ¶ 22.

approximately 1,250 GWh of production.[216] The EV industry drives battery capacity growth, and curtailing this industry will result in stagnation or reduction of domestic battery capacity, ultimately benefiting Chinese competition and undermining U.S. strategic interests.

Domestic critical mineral development is also likely to be curtailed. The lithium-ion battery and EV industries represent two of the few sectors that utilize critical minerals for consumer applications, creating large-scale demand that incentivizes domestic critical mineral development essential to U.S. national security. Reducing consumer demand through policy changes removes incentives for critical mineral developers to establish capabilities within the United States. And, in the absence of increased U.S. production and refining of critical minerals, China may be the only country from which such minerals can be sourced. While significant progress has been made toward shifting supply chains domestically, this process requires time and assurances of future demand that would be undermined by revoking the endangerment finding, with impacts likely to ripple through the supply chain and affect the ability to source from domestic producers. [C-1, C-3, C-14, C-15, C-6, C-7, C-8, C-19, C-20, C-27]

C. An interim final rule halting GHG standards would be unlawful, and would adversely impact ZETA's members.

At a minimum, EPA should consider comments on this proposal in the normal course and must not undertake an interim final rulemaking to suspend currently effective GHG standards as rumors suggest the Agency may be considering. Any such effort would be illegal, and would not comport with the rulemaking requirements of the CAA and Administrative Procedure Act. Good cause for such a rulemaking does not exist.[217] Further, any changes to the current model year 2025 would be unsupported as this model year has nearly concluded. Thus, the One Big Beautiful Bill Act will have limited impact as the Inflation Reduction Act incentives remain in place through the end of this month, and most OEMs are already producing and selling next year's models.

Nor is there any evidence that automakers could not meet MY2024 and MY2025 GHG or criteria pollutant standards. Automakers' SEC reports on this topic mention no such thing. Rescissions or reductions in stringency of EPA's vehicle GHG standards would alter significant reliance interests. ZETA's members have already entered into contracts to trade compliance credits earned by exceeding the standards for MY2025. An interim final rule that delays or negates GHG standards could further destroy reliance interests and otherwise be unlawful. For these reasons, and others, EPA should not issue an interim final rule. [C-1, C-27]

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[216] *See Lithium Ion's Leading Producers in 2030: China to Dominate as West Ramps Up*, Benchmark (Sept. 2, 2024), https://source.benchmarkminerals.com/article/lithium-ions-leading-producers-in-2030-china-to-dominate-as-west-ramps-up; *see also* Christian Shepherd & Jinpeng Li, *How China Came to Dominate the World in Renewable Energy*, Wash. Post (Mar. 3, 2025), https://www.washingtonpost.com/climate-solutions/2025/03/03/china-renewable-energy-green-world-leader/.

[217] *See* 5 U.S.C. § 553(b)(B), (d)(3) (requiring "good cause" for interim final rulemaking).

V. EPA Has Also Failed to Consider the Rule's Far-Reaching Consequences Beyond the U.S. Auto Industry.

The proposal fails to analyze the broader consequences of its interpretation that EPA lacks authority to regulate greenhouse gases under the Clean Air Act, and this analytical failure alone renders the proposal arbitrary and capricious. An agency's decision is arbitrary and capricious if the agency has "entirely failed to consider an important aspect of the problem."[218] EPA here has failed to consider the potentially sweeping consequences of the proposal.

A. The proposal fails to address how repealing the endangerment finding would affect other greenhouse gas regulations.

The proposal undermines EPA's authority to regulate GHG emissions from other sources, including aircraft and stationary sources. That is so because the separate endangerment findings for these sources stem from the same factual and scientific underpinnings as the 2009 endangerment finding that EPA proposes to repeal here. Although the proposal notes that other CAA endangerment findings may suffer from the same flaws as the 2009 endangerment finding, the Agency fails to address how taking action risks substantial disruption to sectors that rely on the same foundation.[219]

As one example, it is not evident how EPA could repeal the 2009 endangerment finding without jeopardizing the aircraft endangerment finding because they grow from the same foundation. The 2016 aircraft finding explicitly acknowledged that section 231(a)(2)(A)—the provision governing aircraft—"mirrors the text of CAA section 202(a) that was the basis for the 2009 Endangerment Finding."[220] The aircraft finding was anchored in the 2009 finding for motor vehicles, providing that EPA "is informed by and places considerable weight on the extensive scientific and technical evidence in the record supporting the 2009 Endangerment and Cause or Contribute Findings under CAA section 202(a)" and that "the body of scientific evidence amassed in the record for the 2009 Endangerment Finding also compellingly supports an endangerment finding under CAA section 231(a)(2)(A)."[221]

Moreover, the aircraft finding employed the identical analytical methodology that EPA now claims was improper. In that finding, EPA examined the "aggregate group of the six well-mixed GHGs" taken together, then analyzed harm from this air pollution generally,[222] and also used the same "cause or contribute" framework as the motor vehicle finding.[223] Like aircraft, the endangerment findings for stationary sources also rely on and incorporate the 2009

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[218] *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

[219] *See* 90 Fed. Reg. at 36,298-99.

[220] Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare, 81 Fed. Reg. 54,422, 54,434 (Aug. 15, 2016).

[221] *Id*. at 54,423-24, 54,458-59.

[222] 81 Fed. Reg. at 54,423-24; *see also* 90 Fed. Reg. at 36,307-10.

[223] 81 Fed. Reg. at 54,460-62, 54,465.

endangerment finding. This includes for fossil-fuel-fired power plants,[224] oil and gas operations,[225] and also landfills.[226] Repeal of the 2009 endangerment finding thus has effects on the continuing validity of GHG rules for other sectors, which EPA does not acknowledge. [C-1, C-3, C-4, C-8, C-27]

B. EPA's continued recognition of its CAA authority to regulate GHGs is also important because it helps protect the energy sector from common law liability.

There is yet another reason why EPA should continue to recognize its CAA authority to regulate GHGs: The existence of that authority displaces federal common law claims against energy producers for harms caused by interstate greenhouse gas pollution. In *American Electric Power Co. v. Connecticut* (*AEP*), the Supreme Court held that such federal common-law claims are not viable because the "Clean Air Act and the EPA actions it authorizes displace any federal common-law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired powerplants."[227] In that decision, it mattered both "that emissions of carbon dioxide qualify as air pollution subject to regulation under the Act" and that "the Act 'speaks directly' to emissions of carbon dioxide from [power] plants."[228] On the latter, the Court explained that EPA was then "engaged in a § 7411 rulemaking to set standards for greenhouse gas emissions from fossil-fuel fired powerplants," showing that the CAA "provides a means to seek limits on emissions of carbon dioxide from domestic powerplants."[229] In the wake of *AEP*, other courts have likewise held that the CAA displaces federal public nuisance claims and state tort lawsuits.[230]

EPA asserts that its proposal will not affect that displacement analysis. EPA contends that the "CAA would continue to preempt Federal common-law claims for GHG emissions because 'Congress delegated to EPA the decision whether and how to regulate' such emissions," and so EPA would "retain our authority to regulate emissions, including emissions of the six 'well-mixed' GHGs addressed in the Endangerment Finding, under circumstances that meet the standard for regulation under CAA section 202(a)."[231]

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[224] Standards of Performance for Greenhouse Gas Emissions From New Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 1,430, 1,437-38 (Jan. 8, 2014); New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 89 Fed. Reg. 39,798, 39,807 (May 9, 2024).

[225] 89 Fed. Reg. at 16,837-38.

[226] 81 Fed. Reg. at 59,337.

[227] 564 U.S. 410, 424 (2011).

[228] *Id.*

[229] *Id.* at 425.

[230] *See Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 857 (9th Cir. 2012); *City of New York v. Chevron Corp.*, 993 F.3d 81, 88 (2d Cir. 2021).

[231] 90 Fed. Reg. at 36,297, 36,315.

Whatever the merits of EPA's position, it will engender considerable uncertainty and litigation for large GHG emission sources like energy producers. Throughout its primary rationale, EPA seemingly takes the position that GHGs are categorically excluded from CAA regulation. For example, EPA proposes that the CAA does not grant the Agency authority to regulate GHGs because "Congress did not clearly authorize the EPA to decide" how to address "global climate change concerns," that GHGs are not covered by the Act because the CAA is focused solely on "local or regional" pollutants, and that GHGs do not cause or contribute to harm under ordinary causation and proximate cause principles.[232] Those rationales, if finalized, will raise serious questions as to whether Congress has in fact "empower[ed] the EPA to regulate greenhouse gas emissions" from sources.[233] Future litigants may argue that, under EPA's new approach, it does not have authority to regulate GHG emissions at all, negating the premise of *AEP* and its progeny that "the field has been made the subject of comprehensive legislation" such that other law is not available to fill the gap.[234] As a result, large GHG emission sources could be newly subject to lawsuits raising federal and state common-law claims that were previously thought to be displaced. Such lawsuits would be highly disruptive at minimum.

Nowhere does EPA grapple with these litigation risks and the harms they could inflict. EPA's failure to consider that important part of the problem renders the proposal arbitrary and capricious. [C-1, C-3, C-11, C-27]

C. EPA likewise does not wrestle with the serious harms to human health and welfare that the proposal will cause.

Finally, it is beyond dispute that GHG emissions present a grave threat to human health and welfare.[235] It is likewise well-established that the endangerment finding and resulting GHG emissions standards curb emissions from new motor vehicles, thereby preventing additional harm to the public.[236] Yet EPA's proposal does not grapple with those long-recognized net benefits from the endangerment finding and resulting GHG emissions standards. EPA therefore fails to consider how repeal will cause significant adverse health effects and harms to public welfare.[237] That too renders EPA's proposal arbitrary and capricious. [C-1, C-13, C-14, C-15]

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[232] *Id.* at 36,298-99, 36,290, 36,301.

[233] *Kivalina*, 696 F.3d at 857.

[234] *Id.* at 857 (citing *City of Milwaukee v. Illinois*, 451 U.S. 304, 325 (1981)).

[235] *See generally* National Academies of Science, Engineering, and Medicine, *Effects of Human-Cause Greenhouse Gas Emissions on U.S. Climate, Health, and Welfare* (2025), https://nap.nationalacademies.org/catalog/29239/effects-of-human-caused-greenhouse-gas-emissions-on-us-climate-health-and-welfare.

[236] *See e.g.*, 89 Fed. Reg. at 27,844-45 (explaining that GHG emissions standards have achieved "significant emissions reductions" and continue to have "significant benefits for public health and welfare").

[237] *See, e.g.*, National Academies of Science, Engineering, and Medicine, *Effects of Human-Caused Greenhouse Gas Emissions on U.S. Climate, Health, and Welfare* 2 (2025), https://nap.nationalacademies.org/catalog/29239/effects-of-human-caused-greenhouse-gas-emissions-on-us-climate-health-and-welfare (explaining that additional GHG emissions will lead to more climate change, "affecting incidence of cardiovascular, respiratory, and other diseases," contributing to problems related to "mental health, nutrition, immune health, antimicrobial resistance,

VI. The Draft RIA is Flawed in Multiple Respects, and Cannot Serve as the Basis of Repeal of the Endangerment Finding.

EPA's draft RIA is fundamentally flawed and does not support repealing the endangerment finding. The Agency inexplicably disregarded the draft RIA analysis, departing from EPA's historical approach, and the draft RIA also omits relevant data when evaluating the proposal's impacts.

A. The Agency's failure to take into account the draft RIA analysis is an unexplained departure from past practice.

EPA has historically relied on the RIA in finalizing motor vehicle rules.[238] The proposal here purports to depart from this practice, and asserts that "EPA has not relied upon any aspect of the draft RIA as justification for this proposed rulemaking."[239] The Agency has not explained its rationale for changing position on the relevance of the RIA to motor vehicle rulemakings. Having disclaimed reliance on the draft RIA in its proposal, EPA cannot now change course and rely on that analysis in the final rule. Instead, if EPA wishes to rely on the RIA, then it must re-propose this rule, and allow for public comment.[240] If EPA does not repropose and relies on the draft RIA, the final rule would not be a logical outgrowth of the proposal.[241]

EPA's draft RIA also departs from past practice in failing to use the OMEGA (Optimization Model for Reducing Emissions of Greenhouse Gases) model. EPA developed OMEGA over many years to support regulatory development by estimating manufacturer compliance pathways and associated costs and policy effects. OMEGA reflects rigorous technical evaluations and peer-review processes.[242] The Agency has consistently relied on this model. As one example, the 2024 light-duty vehicle rulemaking included nearly 100 pages of OMEGA modeling analysis, presenting 16 distinct compliance scenarios and extensive cost-benefit analysis. EPA's current proposal does not even mention OMEGA modeling in either the proposed rule or its regulatory impact analysis.

EPA cannot conduct meaningful cost-benefit analysis without using the modeling tools it developed specifically for this purpose, or comparable analytical tools of similar rigor. The

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kidney disease, and negative pregnancy-related outcomes," having "negative impacts on agricultural crops and livestock" and "water availability and quality," and more).

[238] *See, e.g.*, 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 77 Fed. Reg. 62,624, 62,643, 62,842 (Oct. 15, 2012); Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles, 89 Fed. Reg. 27,842, 27,858, 27,892, 27,902 (Apr. 18, 2024).

[239] 90 Fed. Reg. at 36,326.

[240] *See* 42 U.S.C. § 7607(d)(7)(B).

[241] *Chesapeake Climate Action Network v. EPA*, 952 F.3d 310, 320 (D.C. Cir. 2020) (concluding that mandatory reconsideration was required where the proposed rule relied on different data than the final rule).

[242] *See generally* EPA, *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles Regulatory Impact Analysis*, EPA-420-R-24-004, ch. 2 (Mar. 2024), https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1019VPM.pdf.

proposal is flawed because it lacks a rigorous analysis of costs and benefits. The revealed preference approach used in the draft RIA is not rigorous. It is based on limited, outdated data that lacks the sophistication of traditional models. At minimum, EPA must justify why it abandoned its standard analytical approach or demonstrate how it conducted equivalent analysis through alternative methods. The draft RIA does neither. [C-1, C-2, C-23, C-27]

B. The draft RIA ignores relevant data in analyzing the impacts of the proposal.

The draft RIA contains numerous errors. It ignores key data that undermines its desired result and draws unfounded conclusions. Because EPA asserts it is not relying on the draft RIA for the final rule, this comment highlights key errors as illustrative rather than providing an exhaustive review.

Failure to consider alternatives. Absent from the draft RIA is any consideration of alternatives—for example, a modification to the standards instead of their wholesale removal. Because EPA proposes to repeal GHG emissions rules regardless of the final decision on whether to rescind the endangerment finding, there is no reason for EPA's "all or nothing" approach.

Consumer interest in purchasing EVs and willingness to pay for fuel efficiency improvements. The draft RIA cites survey data indicating declining consumer interest in EV purchases and employs a modeling assumption that consumers will pay for fuel economy improvements equivalent to approximately 2.5 years of fuel cost savings.[243] These assumptions are unsupported. There is strong and growing interest in purchasing EVs. More than three-quarters of current EV owners plan to buy an EV again for their next vehicle purchase.[244] Moreover, EV purchasers tend to remain EV owners (*e.g.*, more than 90% of customers who have purchased a Tesla in North America remain Tesla owners), and companies continue to attract new purchasers (*e.g.*, the majority of Rivian R1T customers are first time EV buyers). EPA's assumption about consumers' willingness to pay for fuel savings lacks evidentiary support, and is based on outdated data. It does not reflect the increased efficiency of electric vehicles on the market today. Nor does it value and weigh the other consumer benefits of electric vehicles, despite insistence that individual preferences have a place in the impact assessment for other aspects of the rule.

Future gasoline and diesel prices. The draft RIA uses only two fuel price cases, one of which relies on an outdated version of EPA's historically preferred source (Annual Energy Outlook, a U.S. Energy Information Administration publication), and the other of which involves

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[243] *See* Off. of Transp. and Air Quality, EPA, *Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards: Draft Regulatory Impact Analysis*, EPA-420-D-25-003, at 5-7, 12-19 (July 2025), https://www.epa.gov/system/files/documents/2025-07/420d25003.pdf ("Draft RIA"); *id.* at 5 ("There is indication that consumer/purchaser demand for LD, MD, and HD EVs has decreased below the levels projected in the 2024 vehicle rulemakings."); *id*. at 19 ("Manufacturers have consistently told the Agency that new vehicle buyers will pay for about two or three years' worth of fuel savings before the price increase associated with providing those improvements begins to affect sales.").

[244] Patrick Hertzke et al., *New Twists in the Electric-Vehicle Transition: A Consumer Perspective*, McKinsey & Co. at 6-7 & Exhibit 4 (Apr. 2025), https://www.mckinsey.com/features/mckinsey-center-for-future-mobility/our-insights/new-twists-in-the-electric-vehicle-transition-a-consumer-perspective#/.

a contrived assumption that prices will decrease by $0.25 per gallon for diesel and by $1.00 per gallon for gasoline relative to that outdated case.[245] EPA does not justify why that novel assumption is more accurate than the most recent version of Annual Energy Outlook (from 2025), or why the assumption is reasonable here. This lack of justification is especially troubling given how sensitive the results are to the novel assumption: for two of the scenarios considered—scenarios 2 and 3—they differ only in their liquid fuel price assumption, but the two cases reach different conclusions as to whether proposed rules are a net cost or benefit.[246]

The impact of EVs on the power grid. The draft RIA addresses grid-related costs and benefits based on a single non-peer reviewed study, which includes an explicit disclaimer that it is intended as a working paper only for discussion and comment.[247] The draft RIA also fails to include any analysis on retail electricity prices.[248] By contrast, earlier rules evaluated costs and benefits across all components of the complex U.S. electric grid—generation, distribution, and transmission. The current draft RIA's bare bones and incomplete analysis is insufficient to justify its claimed benefits of avoiding a "strained electric grid." Nor has EPA weighed electricity cost impacts of the rule, and explicitly acknowledges that it has not conducted this analysis.[249] Further, EPA improperly excludes the grid benefits that EVs provide as resources during periods of high demand.

The draft RIA's sparse analysis obscures ample evidence that EVs result in net consumer benefits. For example, one study found that the incremental capital cost of charging infrastructure, including grid upgrades, is at least 2.5 times smaller than the lifetime net benefits of vehicle electrification.[250] Meanwhile, another study found that, since 2011, EVs have contributed more to utility revenues than costs, putting *downward* pressure on utility rates.[251]

The valuation of fuel economy. The draft RIA also uses unsubstantiated assumptions about consumer valuation of fuel economy—*e.g.*, that consumers' willingness to pay only accounts for the first 2.5 years of fuel savings.[252] Nowhere does EPA provide quantitative research to support that assumption. That omission is striking, given EPA elsewhere suggests that there is no consensus in the literature on whether consumers are willing to pay for greater

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[245] *See* Draft RIA at 9-10, 20-21.

[246] *See* Draft RIA at 20-21.

[247] Draft RIA, App'x B at 39-40, 59-60.

[248] *See* Draft RIA at 12.

[249] *Id*. (stating that EPA has not conducted the analysis "needed to determine the impacts on the retail price of electricity for this assessment for this proposal" and expects to "consider this further at the final rule stage.").

[250] Eric Wood et al., *Multi-State Transportation Electrification Impact Study: Preparing the Grid for Light-, Medium-, and Heavy-Duty Electric Vehicles: U.S. Department of Energy (DOE)*, NREL (2024), https://research-hub.nrel.gov/en/publications/multi-state-transportation-electrification-impact-study-preparing.

[251] *EVs Are Driving Rates Down*, Synapse, https://www.synapse-energy.com/evs-are-driving-rates-down (last visited Sept. 19, 2025).

[252] Draft RIA at 30-31.

fuel economy and whether consumers undervalue costs savings from fuel economy.[253] Indeed, to justify its departure from established valuation estimates, EPA cites to a handful of studies that *exclude* EVs from their analysis, rendering them all but useless for determining how consumers value the fuel economy savings from EVs.

Vehicle utilization rates. The draft RIA fails to take into account current, updated analyses that shows electric vehicles are driven more than internal combustion engines and explains why other studies are premised on earlier, short-range EVs that have largely been phased out.[254] The draft RIA further excludes from consideration the most reliable data, which comes from on-board vehicle recorders and comprehensive surveys.[255]

The effect of GHG emissions standards on employment. The EV and battery industry has attracted more than $200 billion in announced investment from 2010 through September 2025, creating more than 250 thousand jobs.[256] To fully analyze employment impacts, the analysis must include each stage of EV development: upstream (mining), midstream (cathode, anode and battery production), and downstream (charging infrastructure and recycling) activities. In fact, recent authoritative analysis suggests that repeal of the standards would result in the loss of a minimum of 130,000 U.S. jobs.[257] [C-1, C-2, C-4, C-5, C-6, C-7, C-8, C-12, C-13, C-14, C-16, C-19, C-20, C-21, C-23, C-25, C-27]

VII. The Proposal Must Be Withdrawn Because EPA Appears to Have Prejudged the Outcome.

There are serious questions as to whether the Agency's rationale in this proposal is reasoned, or merely "contrived,"[258] in violation of administrative law and due process principles. As the Supreme Court held in *Department of Commerce v. New York*, "[t]he reasoned explanation requirement of administrative law[] … is meant to ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public."[259] Contrived reasoning does not suffice. And "[l]osing the opportunity to dissuade an agency from adopting a particular rule is prejudicial."[260] Similarly, agency rulemaking violates

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[253] Draft RIA at 13.

[254] Debapriya Chakraborty et al., *No, Electric Vehicles Aren't Driven Less Than Gas Cars*, UC Davis Inst. of Transp. Stud. (Feb. 25, 2021), https://its.ucdavis.edu/blog-post/no-electric-vehicles-arent-driven-less-than-gas-cars/ (last visited [date]).

[255] *Id*.

[256] Tom Taylor et al., *Tracking the State of U.S. EV Manufacturing*, Atlas Pub. Pol'y (Jan. 2025), https://atlaspolicy.com/tracking-the-state-of-ev-manufacturing/.

[257] Anh Bui et al., *How the Inflation Reduction Act Is Driving U.S. Job Growth Across the Electric Vehicle Industry*, Int'l Council on Clean Transp. (Apr. 2025), https://theicct.org/wp-content/uploads/2025/04/ID-344-–-IRA-jobs_report_final.pdf.

[258] *Dep't of Com. v. New York*, 588 U.S. 752, 784 (2019).

[259] *Id.* at 785.

[260] *Citizens Telecomms. Co. of Minn., LLC v. FCC*, 901 F.3d 991, 1006 (8th Cir. 2018).

due process when a decisionmaker "has an unalterably closed mind on matters critical to the disposition of the proceeding."[261] Those concerns are amply manifest here.

There is a significant risk to the public and interested stakeholders that EPA appears "unwilling or unable to rationally consider arguments" about whether the endangerment finding should be rescinded and whether the Agency should regulate GHGs from motor vehicles.[262] In March 2025, EPA announced that it would reconsider the endangerment finding. Then, the Administrator said: "Today is the greatest day of deregulation our nation has seen. We are driving a dagger straight into the heart of the climate change religion."[263]

There is also evidence that EPA has prejudged whether GHG emissions standards should be repealed. The Administrator has repeatedly referred to the standards as an "EV mandate" and has said that he is "working to end the EV mandate."[264] The President too has announced that "we ended the last administration's insane electric vehicle mandate."[265] EPA conceded that this rulemaking was intended to "[i]mplement POTUS's [t]ermination" of the supposed EV mandate.[266]

These statements demonstrate that the Agency predetermined the outcome of this rulemaking. Although EPA is formally accepting public comments, there is no indication that commenters have a meaningful opportunity to dissuade the Agency from its predetermined course. For these reasons, EPA should withdraw the proposed rulemaking. [C-1, C-2, C-15, C-27]

VIII. The Length of the Comment Period is Itself Unreasonable and Undermines the Legitimacy of EPA's Process and Rule.

Finally, the truncated length of EPA's notice-and-comment period is patently unreasonable. According to EPA, this proposal is the "[b]iggest [d]eregulatory [a]ction in U.S.

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[261] *Miss. Comm'n on Env't Quality v. EPA*, 790 F.3d 138, 183 (D.C. Cir. 2015) (quoting *Air Transport Ass'n of Am., Inc. v. Nat'l Mediation Bd.*, 663 F.3d 476, 487 (D.C. Cir. 2011)).

[262] *Air Transport Ass'n*, 663 F.3d at 487 (internal quotation marks omitted).

[263] Press Release, EPA, *EPA Launches Biggest Deregulatory Action in U.S. History* (Mar. 12, 2025), https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history.

[264] Press Release, EPA, *EPA Administrator Zeldin Celebrates President Trump Officially Ending California's Vehicle Waivers, Delivering Another Major Blow to the EV Mandate* (June 12, 2025), https://www.epa.gov/newsreleases/epa-administrator-zeldin-celebrates-president-trump-officially-ending-californias; *see also* Press Release, EPA, *EPA Announces Action to Implement POTUS's Termination of Biden-Harris Electric Vehicle Mandate* (Mar. 12, 2025), https://www.epa.gov/newsreleases/epa-announces-action-implement-potuss-termination-biden-harris-electric-vehicle.

[265] *Transcript of President Donald Trump's Speech to a Joint Session of Congress*, Associated Press (Mar. 5, 2025), https://apnews.com/article/trump-speech-congress-transcript-751b5891a3265ff1e5c1409c391fef7c.

[266] Press Release, EPA, *EPA Announces Action to Implement POTUS's Termination of Biden-Harris Electric Vehicle Mandate* (Mar. 12, 2025), https://www.epa.gov/newsreleases/epa-announces-action-implement-potuss-termination-biden-harris-electric-vehicle.

history."[267] EPA proposes to rescind the foundational 2009 endangerment finding underpinning greenhouse gas emission standards for motor vehicles, fundamentally reshaping the regulatory foundation on which ZETA and other industry stakeholders have relied for 15 years. Yet EPA provided a comment period of only 52 days—a term which overlaps with that for the draft DOE report on which EPA relies.

Even extended, this period falls short of the 60-day guidance for minimum allowable time for significant rulemakings,[268] let alone the norm for rules involving policy changes or extensive scientific analysis, which routinely last 120 days or longer.[269] The original rulemaking leading to the 2009 endangerment finding well-illustrates the discrepancy: Following the Supreme Court's *Massachusetts* decision, EPA issued an Advance Notice of Proposed Rulemaking (ANPR) providing 120 days to comment, followed by the Proposed Endangerment Finding and an additional 60 day comment period.[270] By contrast, EPA did not provide an ANPR with a comment period and provided only a brief rulemaking comment period—in total, less than 1/3 of the time provided to comment during the 2009 rulemaking.

While ZETA welcomes the opportunity to participate, as it has already noted, the comment period is insufficient.[271] Additional time is warranted to properly analyze the billions of dollars in projected regulatory costs, evaluate the scientific assertions that contradict established climate research, and examine EPA's legal interpretations that would fundamentally alter its authority to regulate air pollution. EPA's self-imposed rush is arbitrary and deprives ZETA and other stakeholders of the robust opportunity to comment to which they are entitled under the CAA and the APA.[272] [C-1, C-27]

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[267] EPA, *EPA Launches Biggest Deregulatory Action in U.S. History* (Mar. 12, 2025), https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history.

[268] *See* Exec. Order No. 13,563, 76 Fed. Reg. 3,821 (Jan. 21, 2011); Exec. Order No. 12,866, 58 Fed. Reg. 51,735 (Sept. 30, 1993); *see also Prometheus Radio Project v. FCC*, 652 F.3d 431, 453 (3d Cir. 2011) (recognizing that 90 days is the "usual" amount of time for comment).

[269] *See, e.g.*, *Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations*, 84 Fed. Reg. 32,520 (July 8, 2019) (providing over 150 days for comments on proposed repeal of Clean Power Plan); *Fact Sheet: Clean Power Plan & Carbon Pollution Standards Key Dates*, EPA (last visited Sept. 19, 2025), https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-clean-power-plan-carbon-pollution-standards-key-dates.html (noting that EPA provided extensions to allow for a 120-day comment period for Carbon Pollution Standards for new power plants, and a 165-day comment period for the Clean Power Plan for existing power plants); *Extension of Comment Period for the Definition of "Waters of the United States" Under the Clean Water Act Proposed Rule and Notice of Availability*, 79 Fed. Reg. 61,590 (Oct. 14, 2014) (extending the comment period to over 200 days for a proposed interpretation of "waters of the United States" under the Clean Water Act).

[270] 74 Fed. Reg. at 66,500.

[271] *See* Comment submitted by Zero Emission Transportation Association (ZETA), Docket No. EPA-HQ-OAR-2025-0194-0316-0093 (Aug. 18, 2025), https://www.regulations.gov/comment/EPA-HQ-OAR-2025-0194-0316; *see also* Comment submitted by Northeast States for Coordinated Air Use Management (NESCAUM), Docket No. EPA-HQ-OAR-2025-0194-0316 (Aug. 20, 2025), https://www.regulations.gov/comment/EPA-HQ-OAR-2025-0194-0370.

[272] *See e.g.*, 5 U.S.C. § 553(c).

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ZETA appreciates the opportunity to share its perspective on EPA's proposal. Among other things, the proposal is inconsistent with the Clean Air Act; contradicts established climate science and does not meet basic standards of scientific integrity; will cause significant harm to the public and industry, including ZETA members; and has been unreasonably rushed, giving inadequate time to both EPA and industry to conduct necessary analysis on the proposal's impacts. ZETA therefore urges EPA not to finalize the current proposal.