

U.S. Environmental Protection Agency Proposes to Alter Framework for Regulating Many Sources of Air Emissions

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In the last two months, the U.S. Environmental Protection Agency (EPA) has issued three proposed rules that, if finalized and implemented as proposed, would significantly change the current regulatory landscape around greenhouse gases (GHGs) and other air pollutants. First, on July 29, 2025, EPA issued a proposed rule entitled “Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards” (the Endangerment Finding Proposed Rule). The Endangerment Finding Proposed Rule would repeal all GHG emission standards for light-duty, medium-duty and heavy-duty vehicles that were promulgated under the Clean Air Act (CAA) Section 202(a) on the basis that the 2009 “Endangerment and Cause or Contribute Finding for Greenhouse Gases Under Section 202(a) of the Clean Air Act” (the Endangerment Finding) exceeded EPA’s authority as established in CAA Section 202(a). It is anticipated to be argued that rescission of the Endangerment Finding would invalidate the legal basis for most existing EPA regulations aimed at reducing GHG emissions from vehicles and, as a result, call into question the legal basis that underlies similar rules for power plants and other emissions sources, thus altering the framework for existing regulation of GHG emissions and future promulgation and implementation of GHG emissions standards. As such, legal challenges are expected if the Endangerment Finding Proposed Rule is finalized.

Second and third, on June 17, 2025, EPA issued two proposed rules entitled “Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units” (the GHG EGU Proposed Rule) and “National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units” (the MATS Proposed Rule).

- The GHG EGU Proposed Rule puts forward a primary proposal to reinterpret CAA Section 111(b) to require EPA to demonstrate that emissions from an existing source category “cause, or contribute significantly to” air pollution before it may regulate that pollutant and to establish a finding that GHG emissions from fossil-fuel fired electricity generating units (EGUs) do not contribute significantly to dangerous air pollution. EPA alternatively proposes to repeal a narrower set of requirements that includes emission guidelines for existing fossil fuel fired steam generating units, carbon capture and sequestration (CCS)-based standards for coal fired steam generating units undergoing large modifications and the CCS-based standards for new base load stationary combustion turbines. These proposed changes seek to first rescind all GHG limits on EGUs under the CAA or to substantially limit the regulatory obligations for EGUs under the CAA.
- The MATS Proposed Rule, which is not discussed in greater detail below for brevity, seeks comment on the EPA’s proposal to repeal the following amendments made in 2024 to the rule: (i) the decrease in the filterable particulate matter emission standard for EGUs from 0.030 pounds/million British thermal units (MBtu) to 0.010 pounds/MBtu; (ii) limiting the compliance demonstration requirements for the fPM emission standards for coal- and oil-fired EGUs to only allowing the use of particulate matter continuous emission monitoring system(s); and (iii) the decrease in mercury emission standards for existing lignite-fired EGUs from 4.0 pounds/trillion British thermal units (TBtu) to 1.2 pounds/TBtu. If finalized, this proposed rule would repeal many of the 2024 amendments, bringing the MATS standards back to a similar place as they were in 2012.

This *Alert* will discuss the major elements of the Endangerment Finding Proposed Rule and the GHG EGU Proposed Rule, along with initial reactions from some environmental and industry groups and timelines for public comment.

Proposed Repeal of 2009 Endangerment Finding and Vehicle Emission Standards

Overview and History

On August 1, 2025, EPA published the Endangerment Finding Proposed Rule, which proposes to repeal the 2009 Endangerment Finding and remove all existing regulations that require new vehicles to comply with GHG emission standards. If finalized, this proposal would eliminate the current legal basis for EPA’s regulation of

GHG emissions from the transportation sector. Similar legal bases underpin regulation of GHG emissions from other sources of air emissions (e.g., power plants, aircraft, and the oil and gas industry). As such, it is anticipated to be argued that rescission of the Endangerment Finding would call into question the legal bases underlying those regulations as well.

CAA Section 202(a)(1) directs EPA to establish standards for new vehicle emissions if the agency finds that the pollutant “causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.” In 2009, EPA issued an Endangerment Finding that a defined mix of six greenhouse gases (carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride) in the atmosphere endangers public health and welfare, pursuant to the CAA Section 202(a). This Endangerment Finding was made in response to the Supreme Court’s decision in *Massachusetts v. EPA*, a 2007 case in which Massachusetts and several other states petitioned EPA to regulate carbon dioxide emissions and other gases that contribute to global warming from new motor vehicles. EPA had previously denied Massachusetts’ petition, claiming that the CAA did not authorize EPA to regulate GHG emissions. The Supreme Court sided with Massachusetts, holding that carbon dioxide fit the CAA’s broad definition of “air pollutant” and that EPA could not refuse to regulate GHGs on this basis and must provide a valid reason, based on the law, for not regulating them. EPA’s Endangerment Finding was promulgated after this decision and is the legal underpinning for EPA’s promulgation of tailpipe standards for light-, medium- and heavy-duty vehicles since 2010.

EPA’s Stated Primary Rationale for the Proposed Endangerment Finding Recission

In its Endangerment Finding Proposed Rule, based on its statutory analysis and review of the Endangerment Finding’s administrative and scientific record, EPA interprets CAA Section 202(a) to prohibit EPA’s jurisdiction over GHG emissions for vehicle standards based on global climate change concerns. In its Endangerment Finding Proposed Rule preamble, EPA states that the CAA Section 202(a) is best read to regulate air pollutant emissions that cause or contribute to air pollution that endangers public health or welfare through local or regional air pollution. By contrast, the 2009 Endangerment Finding asserts that GHGs lead to increases in global temperature that produce potentially adverse public health consequences. Citing the agency’s curtailed discretion after the Supreme Court’s decision in *Loper Bright v. Raimondo*, EPA concludes in the Endangerment Finding Proposed Rule that the Endangerment Finding determination is too attenuated to fit the definition of “air pollution” under the CAA. EPA has included its reasoning in the rule preamble to

support the argument that regulation under Section 202(a) cannot be based solely on atmospheric concentrations without reference to local or regional effects. Further, EPA states that analyzing global climate change involves assessing causal relationships that are too uncertain to fit within the terms “cause” and “contribute” as used in CAA Section 202(a). As such, EPA proposes that emissions from a particular class of new vehicles must themselves cause or contribute to harmful air pollution. Additionally, EPA states that EPA’s position is not contrary to *Massachusetts v. EPA*, as EPA does not read that decision to require that the agency find that GHGs are subject to regulation under Section 202(a).

Further, EPA states in its Endangerment Finding Proposed Rule that the CAA Section 202(a) does not permit the procedural discretion asserted in the 2009 Endangerment Finding. Under the statutory language in Section 202(a) of the CAA, in order to regulate emissions, EPA must determine that emissions of a pollutant from a particular class of new vehicles (1) “cause, or contribute to” air pollution, and (2) that this pollution may endanger public health. The 2009 Endangerment Finding treated these two statutory elements as severable, finding that the six designated GHGs endangered public health without simultaneously determining that emissions from a specific class of vehicles contributed to that danger. In the Endangerment Finding Proposed Rule, EPA asserts that this approach was inconsistent with the text of the CAA. According to EPA, the CAA requires concurrent “endangerment” and “cause and contribute” findings that link emissions from specific vehicle categories to harmful air pollution. Lastly, EPA proposes that the Endangerment Finding implicates the “major questions doctrine,” a legal principle invoked by the Supreme Court in cases like *West Virginia v. EPA*, limits agencies from relying on vague statutory language to justify transformative regulatory actions. This case was discussed at length in our [prior Alert](#). EPA contends that the CAA does not provide sufficient statutory support to justify the far-reaching impacts of the Endangerment Finding.

EPA’s Alternative Rationale for the Proposed Rescission of the Endangerment Finding

As an alternative rationale or basis for its proposed rescission, EPA proposes that the Endangerment Finding should be rescinded because of uncertainty in the scientific record since 2009, as EPA stated that the Endangerment Finding relied on unduly pessimistic scientific research. As part of its review, EPA relied on a recent draft report submitted by the U.S. Department of Energy (DOE) Climate Working Group to Secretary of Energy Christopher Wright on impacts of certain emissions on the climate, later published in the Federal Register. This document, for which DOE has requested public comment, asserts that scientific developments since 2009 cast doubt on the

assumptions in the Endangerment Finding. Thus, EPA proposes that the scientific record is too speculative to reach an affirmative endangerment finding. Further, EPA proposes that the Endangerment Finding should not have analyzed the combined effect of the designated six GHGs. Rather, EPA states that the agency should have analyzed the properties and impacts of each GHG on an individual basis. EPA claims that this analytical flaw reduces the reliability of the Endangerment Finding and should result in its rescission.

EPA's Separate Bases for Proposed Repeal of Vehicle Emission Standards

As an additional alternative, EPA proposes to repeal all vehicle emissions standards on the basis that existing technology is not adequate to address global climate change without risking greater harm to human health and the environment. Section 202(a)(2) of the CAA directs the administrator to determine the "requisite technology" needed to meet emissions standards. In the Endangerment Finding Proposed Rule, EPA contends that even if the Endangerment Finding were to remain in effect, policy considerations can be taken into account when setting emissions standards and determining the "requisite technology." When considering policy choices, including safety, consumer choice, economic opportunity and air quality, EPA asserts that there is no "requisite technology" adequate to address global climate change. EPA further states in its proposed rescission that reducing GHG emissions from vehicles does not have a measurable impact on global GHG concentrations and climate change. Specifically, EPA argues that reducing GHG emissions from light- and medium-duty vehicles in the U.S. through the use of existing technology would have a minimal impact on global climate change. Further, EPA argues that, at a minimum, the "requisite technology" would require replacing internal combustion engines with electric vehicles or other no-emissions technology. EPA asserts that such a fuel shift is indistinguishable from the emission shifting barred by the Supreme Court's ruling in *West Virginia v. EPA*. EPA similarly states that there is no "requisite technology" for heavy-duty vehicles capable of controlling global GHG emissions.

EPA also asserts that the agency does not need to make an endangerment finding when the regulatory authority used to address the finding would be ineffective on the identified dangers. Here, EPA states that the agency should consider whether the regulatory tools of the CAA would be effective in addressing global climate change. EPA notes that because reducing GHG emissions through vehicle emissions standards would have a minimal effect on global climate change, it would be improper for the agency to implement emissions standards when reduction in GHG emissions outside the U.S. would be most effective in addressing a global issue.

Lastly, EPA also proposes to repeal all vehicle emissions standards because emissions standards increase the price of vehicles to consumers and therefore disincentivize consumers from purchasing newer vehicles that are safer and emit fewer air pollutants, including criteria and hazardous air pollutants. EPA asserts that this is contrary to the broader goals of the CAA.

Proposed Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units

Overview and History

On June 17, 2025, EPA issued a proposed rule that would repeal the GHG emissions standards for “fossil fuel”-fired (i.e., coal-, oil- and gas-fired) EGUs such as power plants. If finalized, the GHG EGU Proposed Rule would alter the federal framework for regulating GHG emissions from fossil fuel-fired EGUs under the CAA.

In 2015, the Obama Administration finalized the Clean Power Plan (CPP). The CPP aimed to reduce carbon emissions through the implementation of generation shifting technologies at existing fossil fuel-fired power plants. The CPP was promulgated under Section 111(d) of the CAA and set ambitious performance standards for existing power plants. However, due to litigation leading to the issuance of a stay by the U.S. Supreme Court, the CPP was never implemented. In 2015, the Obama Administration also finalized New Source Performance Standards (NSPS) for new power plants (the 2015 NSPS). In the GHG EGU Proposed Rule, EPA acknowledges that the 2015 NSPS rely on the conclusions in the 2009 Endangerment Finding. In 2019, the Trump Administration formally repealed the CPP and promulgated the Affordable Clean Energy Rule (ACE). This rule was discussed at length in our [prior Alert](#). The ACE did not establish specific limits on emissions; rather, it promoted the employment of a broad range of heat rate improvement technologies and techniques such that EGUs would generate electricity more efficiently with less carbon intensity. However, like its predecessor, the ACE was never implemented due to a vacatur by the D.C. Circuit and a repeal of the ACE by the Biden Administration in the preamble to its GHG emissions rule (the 2024 GHG Emissions Rule). The 2024 GHG Emissions Rule was promulgated by EPA in May 2024 and included a set of actions targeting GHG emissions from new, modified, reconstructed and existing fossil fuel-fired EGUs. This rule was discussed at length in our [prior Alert](#).

In 2024, the 2024 GHG Emissions Rule was challenged by 27 states and industry groups who filed petitions for review in the D.C. Circuit. In July 2024, the court denied a request to stay the 2024 GHG Emissions Rule. Following the recent change in administration, the D.C. Circuit agreed to hold the case in abeyance pending further actions by the agency. In EPA's status report provided to the court on July 24, 2025, EPA notes that EPA intends to issue a final rule by December 2025. The next status report is due on October 22, 2025.

On June 17, 2025, EPA proposed to repeal the 2015 NSPS and the 2024 GHG Emissions Rule with the GHG EGU Proposed Rule. This action comes in response to Executive Order 14154, "Unleashing American Energy," which directs federal agencies "to identify those agency actions that impose an undue burden on the identification, development, or use of domestic energy resources – with particular attention to oil, natural gas, coal, hydropower, biofuels, critical mineral, and nuclear energy resources." The GHG EGU Proposed Rule includes a primary proposal (complete repeal) and an alternative proposal (targeted repeal) of the 2024 GHG Emissions Rule and 2015 NSPS. EPA's primary proposal makes two major changes: (i) it proposes to require a "significant contribution" finding as a predicate to regulation; and (ii) it proposes that GHG emissions do not contribute significantly to air pollution under the CAA. If adopted, EPA's primary proposal would repeal all GHG standards for the power sector from the 2015 NSPS and the 2024 GHG Emissions Rule. Alternatively, EPA is proposing a targeted rollback of many consequential elements of the 2024 GHG Emissions Rule. EPA's alternative proposal would: (i) repeal the emission guidelines for existing fossil fuel-fired steam generating units; (ii) repeal the CCS-based requirements for coal-fired steam generating units undertaking a large modification; and (iii) repeal the phase 2 CCS-based requirements for new base load combustion turbine EGUs.

EPA's Primary Proposal

EPA Proposes a "Significant Contribution" Requirement

In the GHG EGU Proposed Rule, EPA is proposing to reinterpret Section 111(b) of the CAA to require the agency to demonstrate that emissions from a pollutant emitted by an existing source category "cause, or contribute significantly to" air pollution before it may regulate that pollutant. Section 111 of the CAA authorizes EPA to list categories of emission sources (source categories) and, once listed, establish standards of performance that reflect the best systems for reducing emissions from those sources. EPA can list a source category if it determines that the source category "causes, or contributes significantly to" air pollution. In the 2015 NSPS, EPA stated that it was not

required to make a separate significant contribution finding for a category that included all fossil fuel-fired EGUs because sources within the category had previously been listed under Section 111(b). Thus, EPA combined two source categories – steam generators and combustion turbines – into a single source category, “fossil fuel-fired electricity generating units,” in the 2015 NSPS. Because each original source category had been determined to “cause, or contribute significantly to” air pollution, EPA treated the new consolidated category as inheriting the same significant contribution status.

The GHG EGU Proposed Rule reverses this interpretation. EPA now proposes that the agency should make a pollutant-specific “significant contribution” determination every time it seeks to regulate a new pollutant from an existing source category. EPA reads the CAA’s “causes, or contributes significantly to” as requiring two significant contribution findings: one at the time of listing the source category and another each time EPA wants to regulate a particular pollutant from an existing category. In the context of the 2015 NSPS and the 2024 GHG Emissions Rule, this new interpretation would require EPA to determine that GHG emissions from EGUs “contribute significantly” to air pollution before regulation could proceed. In the alternative, EPA proposes that Section 111 at least authorizes the agency to decide to require a significant contribution determination. Under the GHG EGU Proposed Rule, if EPA determines that GHG emissions from power plants do not significantly contribute to air pollution, EPA would have no authority to impose standards of performance for GHG emissions from power plants.

EPA Proposes that GHG Emissions do not “Significantly Contribute” to Relevant Pollution

EPA also proposes that GHG emissions from fossil fuel-fired power plants do not contribute significantly to air pollution under the CAA. Section 111 of the CAA triggers regulation if the agency concludes that the emissions “contribute significantly” to dangerous air pollution. Historically, EPA considered GHG emissions from power plants to satisfy this standard. The agency reasoned that the power plant sector’s global tonnage was large and that even incremental decreases in emissions would reduce global climate impacts. This finding underpinned the 2015 NSPS and the 2024 GHG Emissions Rule.

In the GHG EGU Proposed Rule, EPA seeks to reinterpret the phrase “contributes significantly” in the CAA to include consideration of policy issues inherent in the statutory structure that include effectiveness and cost-reasonableness of emissions reduction controls, impacts on affected industry, and impacts of the emissions on public health and welfare. EPA contends that potential emissions reduction tools, including generation shifting, carbon capture technology, natural gas co-firing and

heat rate improvements, are either not allowed under existing legal precedent, not adequately demonstrated or cost prohibitive. EPA continues that because the agency is unlikely to develop a system of emissions reduction that would result in meaningful, cost-reasonable emission reductions, the contribution of power plants to air pollution is not significant within the meaning of the CAA. Further, EPA proposes to reinterpret “contributes significantly” to include principles of proximate causation. EPA contends that the share of GHG emissions from the U.S. power sector is minor compared to other countries and has been declining over time. Thus, the relative contribution of GHG emissions from U.S. power plants as well as the attenuated nature of the causal chain between GHG emissions volume from this source category and danger to public health may not be a significant contribution to global GHG concentrations, particularly given the discretion conferred by the term “significant” to the agency. EPA contends that GHG emissions from power plants do not rise to a level that justifies invoking regulation under Section 111.

EPA’s Alternative Proposal: Targeted Repeal of Existing Standards

As an alternative to the finding that GHG emissions do not contribute significantly to air pollution, EPA proposes to repeal specific portions of existing regulation. Specifically, EPA reasons that the 2024 GHG Emissions Rule was premised on CCS and fuel-switching technology that is not commercially viable or effective. The alternative proposal in the GHG EGU Proposed Rule would: (i) repeal the 90% CCS requirement for existing long-term coal units; (ii) repeal the 40% natural gas co-firing requirement for medium-term coal units; (iii) repeal the emission guidelines for existing fossil fuel-fired steam generating units in their entirety; (iv) repeal the 90% CSS requirement for coal units undertaking large modifications; and (v) repeal the 90% CCS requirements for new base load turbines. The alternative proposal does not modify the requirements for new and reconstructed intermediate load and low load turbines or phase 1 requirements for new and reconstructed base load turbines. Further, the 2015 NSPS would be preserved under the alternative proposal. EPA reached these conclusions by re-evaluating the costs and assumptions undergirding the best systems of emission reduction (BSER) for fossil fuel-fired power plants in the 2024 GHG Emissions Rule. For each targeted repeal in the GHG EGU Proposed Rule, EPA applied the traditional CAA Section 111 BSER criteria: adequacy of demonstration, cost, non-air-quality impacts and energy requirements. For each criteria, EPA reached conclusions that departed from those it made last year in the 2024 GHG Emissions Rule. EPA also emphasized the Supreme Court’s ruling in *West Virginia v. EPA* pertaining to EPA’s inability to compel large shifts in energy technology without clear authorization from Congress. If EPA does not adopt its primary proposal, the alternative proposal would impose a lighter-

touch framework to federal power plant regulation than what exists under the 2024 GHG Emissions Rule.

Implications

The Endangerment Finding Proposed Rule, if finalized, could have sweeping impacts on many environmental regulations, as the Endangerment Finding underlies multiple EPA regulations, beyond just fuel efficiency and pollutant emissions standards for cars. The EPA has historically used the same analytical framework as the 2009 Endangerment Finding in other areas of CAA regulation including stationary source permitting, emission standards for power plants and other stationary sources, aircrafts and oil and gas operations. Further, EPA states that the Endangerment Finding Proposed Rule will provide greater certainty and regulatory relief to auto manufacturers. The American Trucking Association stated that the proposal would alleviate supply chain issues and higher prices. By contrast, environmental groups have criticized the Endangerment Finding Proposed Rule for lacking a scientific basis and seeking to invalidate climate regulations. Thus, significant legal challenges immediately following rule finalization are expected.

Upon finalization of the Endangerment Finding and GHG EGU Proposed Rules, expected ensuing litigation may also poise the Supreme Court to reconsider its original ruling in *Massachusetts v. EPA*, which affirmed EPA's authority to regulate GHGs as air pollutants. It is uncertain when EPA is expected to finalize this proposed rule, until EPA issues its Spring 2025 Unified Regulatory Agenda.

Timeline

Comments on the proposed repeal of the Endangerment Finding are due by September 22, 2025. Comments on the GHG EGU Proposed Rule were due on August 7, 2025, and comments on the MATS Proposed Rule were due by August 11, 2025. Additionally, virtual public hearings for the Endangerment Findings were held in late August 2025. Information on the timing for rule finalization will become available upon publication of EPA's Spring 2025 Unified Regulatory Agenda by the Office of Management and budget Office of Information and Regulatory Affairs.

The Kirkland team will continue to closely monitor these updates and developments. In the meantime, please reach out to Kirkland's Environmental team with any questions or for further guidance.

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Suggested Reading

- 25 July 2025 Kirkland Alert The “One Big Beautiful Bill Act” is Signed Into Law by President Trump: Key Changes to Environmental Programs
- 28 May 2025 Kirkland Alert House Proposes Scaling Back of Renewable Incentives – Next Stop, Senate
- 12 May 2025 Kirkland Alert New EPA Guidance Clarifies When Data Centers and Other Operators May Utilize Emergency Backup Generators to Support Local Power Supply

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