



Insight

Is EPA's Endangerment Finding at Risk?

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Executive Summary

- As directed by President Trump's executive order, the Environmental Protection Agency (EPA) is planning to challenge and potentially rescind its 2009 endangerment finding, which concluded that six types of greenhouse gas (GHG) emissions pose harm to public health and welfare, and which serves as the legal basis for the agency's regulations on GHG emissions.
- If EPA's endangerment finding is rescinded, it may not have any material impact on the agency's legal basis for issuing future climate regulations, since the 2022 Inflation Reduction Act amended the Clean Air Act to provide the EPA with explicit authority and obligations to regulate GHG emissions.
- Nevertheless, repealing the endangerment finding would likely create chaos for U.S. climate policy, as it would make it much easier to repeal the existing EPA GHG regulations, which would subject EPA to legal challenges and produce increasing policy uncertainty for businesses.

Introduction

Environmental Protection Agency's (EPA) Administrator Lee Zeldin is [planning](#) to strike down the agency's 2009 endangerment finding, which was the agency's original legal basis regulating greenhouse gas (GHG) emissions. This move is in response to President Trump's executive order, "[Unleashing American Energy](#)," signed on his first day in office, which requested the EPA to submit recommendations to the White House's Office of Management and Budget on the legality and continuing applicability of the EPA's endangerment finding.

To comply with the Supreme Court's order in the 2007 *Massachusetts vs. EPA* case, which

requested EPA to either release an endangerment finding or provide explanations for not issuing it, EPA released a scientific finding in 2009 concluding that six types of GHG emissions pose harm to the public health and welfare of current and future generations. The agency has since proposed and issued several regulations to curb sector-based GHG emissions such as those from motor vehicles and airplanes.

Yet even if EPA's endangerment finding is rescinded, it may not have any material impact on the agency's legal basis for issuing future climate regulations, as the 2022 Inflation Reduction Act (IRA) added seven sections of amendments to the Clean Air Act (CAA) that gave the EPA explicit authority and obligations to regulate GHG emissions.

Nevertheless, repealing the endangerment finding would likely create chaos and uncertainty for U.S. climate policies, as it would make it much easier to repeal the existing EPA GHG regulations, which would subject EPA to legal challenges and worsen the regulatory environment for businesses.

What Is EPA's Endangerment Finding?

EPA's endangerment finding provided the original legal basis for the agency to regulate GHG emissions. This finding was issued in response to a Supreme Court order following a legal challenge to request EPA to regulate GHG emissions.

Under the [1970 Clean Air Act](#) (CAA), EPA is authorized to regulate air pollutants that harm public health and public welfare. In 1999, the International Center for Technology Assessment and other organizations [petitioned](#) EPA to regulate GHG emissions from motor vehicles under the CAA. In 2003, EPA [denied](#) the petition and argued that "Congress has not granted EPA authority" and that it was "not appropriate at this time" for the agency to regulate GHG emissions from motor vehicles.

Following the denial of the petition, several states, cities, and private entities sued EPA to request it to regulate GHG emissions. In the case [Massachusetts v. EPA \(2007\)](#), the Supreme Court [held](#) that GHGs are air pollutants under EPA's authority via the CAA and requested EPA to [determine](#) whether GHG emissions from new motor vehicles cause or contribute to air pollution that would endanger public health or welfare. In 2009, EPA under the Obama Administration issued the [following](#):

Endangerment Finding: The Administrator finds that the current and projected concentrations of the six key well-mixed greenhouse gases—carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆)—in the atmosphere threaten the public health and welfare of current and future generations.

Cause or Contribute Finding: The Administrator finds that the combined emissions of these well-mixed greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas pollution that threatens public health and welfare.

Potential Arguments to Rescind the Endangerment Finding

There are different arguments EPA could use to repeal the endangerment finding. For example, it could argue that updated scientific evidence no longer supports the original finding. But it would be [immensely difficult](#) for EPA to provide convincing explanations as to why the six types of GHG emissions do not pose harm to the public health and welfare, as there is substantial scientific evidence to [support](#) the endangerment finding. Using this argument could open a flood gate to legal challenges to other climate policies at the federal and state levels that are predicated on the legal basis that GHG emissions pose harm to public health and welfare.

Alternatively, EPA [could argue](#) that the finding no longer serves a legal purpose, as the IRA amended the CAA to deem GHGs as pollutants. Since the IRA is a reconciliation bill, provisions in the legislation must comply with the [Byrd Rule](#), which prohibits a provision that does not produce a change in outlays or revenues to be included. Even though the language defining GHG emissions itself does not have budgetary impact, it was included in the IRA as [a necessary term](#) for stating the budgetary provision.

The IRA added seven new sections to the CAA that [include explicit language](#) deeming the six types of GHGs specified in the endangerment finding are air pollutants and that reducing them is a core objective of the CAA. The seven new sections [provide authority and resources](#) for EPA to reduce GHG emissions in sectors such as heavy-duty vehicles, the power sector, and the oil and gas sector. For example, the IRA appropriated \$1 billion to EPA to encourage the deployment of zero-emission heavy-duty vehicles. In this section, the [legislative text](#) includes the following explicit language: “The term ‘greenhouse gas’ means the air pollutants carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride.”

Notably, the same language is repeated across all seven sections of the amendments to the CAA under the 2022 IRA. In effect, EPA’s authority and obligations to regulate GHG emissions have been codified in law under the CAA amendments in the IRA.

What Does It Mean if the Endangerment Finding Is Rescinded?

If EPA’s endangerment finding is rescinded, it may not have any material impact on the agency’s legal basis for issuing future climate regulations on GHG emissions, since the IRA amended the CAA to grant explicit authority to the agency. Nevertheless, repealing the

endangerment finding would likely create [chaos](#) and uncertainty for U.S. climate policy.

First, rescinding the endangerment finding would make it much easier for the Trump Administration to repeal the existing EPA GHG emissions regulations because the original legal basis for this authority would no longer exist. Under the Obama and Biden Administrations, EPA has issued several sector-based GHG emissions regulations using the endangerment finding as a legal basis. For example,

- [Light-duty passenger cars & trucks](#) (2024): Updates the existing GHG emissions standards for light and medium-duty vehicles to further reduce harmful air pollutant emissions.
- [Commercial trucks & buses](#) (2024): Updates the existing GHG emissions standards for heavy-duty vehicles aimed at further reducing harmful air pollutant emissions.
- [Aircraft](#) (2020): Regulates the GHG emissions from large U.S. commercial airplanes.

Second, repealing the endangerment finding would immediately subject EPA to legal challenges that could last years. Before the dispute could be adjudicated by the courts, there would be considerable confusion and uncertainty over compliance with the existing regulations. This would negatively impact the regulatory environment for businesses, as they need durable and consistent policies to make long-term investment decisions.

From the perspective of policymaking, rescinding EPA's endangerment finding puts a big question mark on the outlook of U.S. climate policies. Currently, at the federal level, the United States uses a patchwork of policies to mitigate GHG emissions, such as handing out massive clean energy tax subsidies under the IRA and relying on command-and-control EPA regulations. The IRA energy tax provisions will likely be subject to at least partial repeal in an upcoming 2025 reconciliation bill. Even if a future administration seeks to regulate GHG emissions via EPA rulemaking, it would take a long time, and generally such regulations [are costly, inflexible, and vulnerable to legal challenges](#).

Conclusion

Although rescinding the endangerment finding may not have any material impact on EPA's authority and obligations to regulate GHG emissions due to the IRA's CAA amendments, it would still have major implications for future U.S. climate policies.

Unless Congress passes durable and bipartisan legislation to mitigate economy-wide GHG emissions in the future, the United States will not have a clear federal policy path to reducing GHG emissions.