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Legal Sidebar

EPA to Revisit Greenhouse Gas Endangerment Finding

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On March 12, 2025, the U.S. Environmental Protection Agency (EPA) announced that it would initiate "a formal reconsideration" of its "Endangerment Finding," a 2009 rule under the Clean Air Act (CAA) in which EPA found, for the first time, that the combined atmospheric concentration of six greenhouse gases (GHGs) was "air pollution which may reasonably be anticipated both to endanger public health and to endanger public welfare." In 2016, EPA affirmed that finding based on its review of updated science. The agency has since relied on its 2009 and 2016 findings to set a series of GHG emission standards for cars and light trucks, power plants, and facilities in the oil and gas sector. A repeal of the 2009 Endangerment Finding thus might undermine those substantive regulations, though that outcome is not certain.

EPA's deliberations on whether and how to amend the Endangerment Finding may be shaped by the judicial decisions that prompted EPA to issue the Endangerment Finding in the first instance and that subsequently upheld the 2009 rule against legal challenge. Any attempt to revise the Endangerment Finding would also be subject to CAA-mandated procedures and would likely implicate administrative law principles governing agencies' changes in position. This Sidebar provides an overview of these legal considerations and summarizes potential congressional responses to EPA's planned reconsideration.

Massachusetts v. EPA and the Roots of the Endangerment Finding

The Endangerment Finding grew out of a 1999 petition for rulemaking in which 19 private organizations called on EPA to regulate GHG emissions from new motor vehicles under CAA Section 202(a)(1). That statutory provision states that the EPA Administrator "shall" issue standards for air-pollutant emissions from new motor vehicles that "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."

In 2003, EPA denied the petition, giving two reasons for its decision. First, the agency maintained that it lacked statutory authority to regulate GHG emissions because GHGs were not "air pollutants" subject to the CAA. Second, even if it had the authority to act, EPA explained that it would decline to do so based on a variety of policy concerns. For example, EPA claimed that regulating GHG emissions under CAA

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Section 202(a)(1) would conflict with the George W. Bush Administration's decision to address climate change through further research and through incentive-based programs. EPA also claimed that regulation could interfere with the President's efforts to negotiate with other countries to reduce their emissions and could complicate the Administration's efforts to set motor vehicle fuel efficiency standards under other statutory authority.

The petitioners—joined by intervenor states, including Massachusetts—sought judicial review of EPA's petition denial. Their case eventually reached the U.S. Supreme Court under the name *Massachusetts v. EPA*. The threshold question in *Massachusetts* was whether any of the petitioners had standing to sue. To establish standing, a plaintiff in federal court must show that it has an actual or imminent, concrete, and particularized injury-in-fact; that injury must be fairly traceable to the defendant's conduct; and it must be likely that a favorable ruling would redress the injury. Five justices concluded that Massachusetts had made the requisite three-part showing. They stressed, however, that the state was in a "special position" because it was suing to protect its "quasi-sovereign interests" and was thus "entitled to special solicitude" in the standing analysis. Against that backdrop, the Court held that (1) Massachusetts was injured because sea level rise would destroy state land; (2) the state's injury was traceable, in part, to EPA's refusal to regulate motor vehicle GHG emissions; and (3) a judgment in Massachusetts' favor would reduce "to some extent" the risk of harm.

Having found standing, the Court rejected EPA's reasons for denying the rulemaking petition. Because it read the CAA's "sweeping definition" of "air pollutant" to cover "all airborne compounds of whatever stripe," the Court first held that GHGs were "without a doubt" air pollutants under the act. EPA thus had "the statutory authority to regulate the emission of [GHGs] from new motor vehicles."

According to the Court, EPA could not decline to exercise its statutory authority by invoking "a laundry list" of policy concerns. This was so, the Court explained, because EPA's stated concerns lay outside the scope of EPA's authority under the statute. Because CAA Section 202(a)(1) directs the EPA Administrator to form a scientific judgment only about whether an air pollutant "causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare," it "constrains agency discretion to pursue other priorities of the Administrator or the President."

Given EPA's limited scope of discretion under Section 202(a), the Court held that the agency could "avoid taking further action only if it determine[d] that greenhouse gases do not contribute to climate change or if it provide[d] some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do." Because EPA had done neither of those things when it denied the petitions, the Court remanded the matter to the agency for further consideration.

Chief Justice Roberts and Justices Scalia, Thomas, and Alito dissented. The dissenting justices did not believe that Massachusetts was entitled to any "special solicitude" in the standing inquiry. In their view, the state failed the ordinary test for standing because its asserted injury was too conjectural to be imminent, too widely shared to be particularized, and too far removed from EPA's regulation of motor vehicle GHG emissions to be fairly traceable to EPA's denial of the rulemaking petition. The dissenters thus would have dismissed on standing grounds.

On the merits, the dissenting justices viewed EPA's policy concerns as "perfectly valid reasons" to "defer making" an endangerment finding. They also believed that EPA had reasonably read the CAA not to regulate GHGs as air pollutants and that the agency's statutory interpretation was therefore entitled to deference under the *Chevron* framework, which required courts to defer to reasonable agency interpretations of ambiguous statutes.

Legal Challenges to the Endangerment Finding

Coalition for Responsible Regulation v. EPA

In response to *Massachusetts v. EPA*, EPA initiated a notice-and-comment rulemaking under CAA Section 202(a)(1) that resulted in the Endangerment Finding. Within six months of the Endangerment Finding, EPA issued three related but distinct GHG regulations addressing emissions from cars and light trucks and phasing in regulation of GHG emissions from certain stationary sources. All four rules were challenged in the U.S. Court of Appeals for the D.C. Circuit, and the challenges were consolidated under the name *Coalition for Responsible Regulation v. EPA*. The petitioners there argued that the Endangerment Finding should be set aside for five reasons. None succeeded.

First, the petitioners maintained that EPA's endangerment inquiry was flawed because it did not weigh "the benefits of activities that require greenhouse gas emissions, the effectiveness of emissions regulation triggered by the Endangerment Finding, and the potential for societal adaptation to or mitigation of climate change." The D.C. Circuit deemed that argument "foreclosed" by the language of CAA Section 202(a)(1) and by the Supreme Court's decision in *Massachusetts v. EPA*, both of which require EPA "to answer only two questions: whether particular 'air pollution'—here, greenhouse gases—'may reasonably be anticipated to endanger public health or welfare,' and whether motor-vehicle emissions 'cause, or contribute to' that endangerment." According to the court, the all-things-considered cost-benefit analysis that the petitioners sought was simply "not part of the § 202(a)(1) endangerment inquiry."

Next, the petitioners argued that EPA erred by delegating its authority to outside entities on whose scientific assessments the agency relied and then erred again by making an endangerment finding despite lingering uncertainty about the links between human activity and climate change. The court dismissed the first of those claims as "little more than a semantic trick." EPA did not delegate decisionmaking to any outside entities. Rather, it "sought out and reviewed existing scientific evidence" and used that evidence to form its own judgment. As to the second claim, the court held that EPA could act despite "residual uncertainty" about the causes of climate change because CAA Section 202(a)(1) was "precautionary in nature" and did not demand "rigorous step-by-step proof of cause and effect." Uncertainty might justify inaction, the court allowed, but per *Massachusetts*, it would need to be "scientific uncertainty . . . so profound that it precludes EPA from making a reasoned judgment as to whether greenhouse gases contribute to global warming." Because the petitioners had not demonstrated that level of uncertainty, and because EPA drew "rational" inferences from the "substantial" scientific record before it, the court refused to second-guess the agency's "science-based decisions."

Third, the petitioners claimed that EPA had to define quantitative thresholds that separate "'safe' climate change from climate change that endangers" and that its failure to do so rendered the Endangerment Finding a mere "subjective conviction." The court rejected this argument, observing that the statute called for no such "precise numerical value." "Quite the opposite," the court concluded, "the § 202(a)(1) inquiry necessarily entails a case-by-case, sliding-scale approach to endangerment" because "danger" is "not set by a fixed probability of harm, but rather is composed of reciprocal elements of risk and harm, or probability and severity." EPA's "failure to distill" an "ocean of evidence into a specific number" was a sign of the breadth and complexity of the agency's inquiry, the court held, "not a sign of arbitrary or capricious decision-making."

Fourth, the petitioners noted that while EPA had defined the "air pollution" subject to the Endangerment Finding as the combined concentration of six GHGs, motor vehicles emitted only four of those gases. EPA thus erred, the petitioners argued, by including the other two GHGs in its analysis. The court found that no petitioner had demonstrated an injury in fact from EPA's alleged error and so it dismissed the claim on standing grounds without reaching the merits.

Finally, the petitioners argued that the Endangerment Finding was procedurally unsound because EPA did not submit a draft of the rule for review by the Science Advisory Board, which reviews and comments on scientific and technical information supporting certain EPA regulations. The court held it was "not clear" if Science Advisory Board review was required. Even if that review was required, the court noted that the petitioners had not cleared the high bar that CAA Section 307(d)(8) sets for invalidating rules based on procedural error.

The consolidated challenges to EPA's three other rules fared no better in the D.C. Circuit, which dismissed or denied all petitions. The petitioners then sought Supreme Court review. The Court granted certiorari but only as to the D.C. Circuit's decision on two of the three rules that EPA issued shortly after the Endangerment Finding. The Supreme Court's subsequent decision in *Utility Air Regulatory Group v. EPA* vacated in part and affirmed in part those rules but on grounds that did not directly address the Endangerment Finding. *Coalition for Responsible Regulation* thus remains the last judicial word on the merits of that finding.

Concerned Household Electricity Consumers Council v. EPA

Between 2017 and 2019, EPA received four petitions urging it to revise or repeal the Endangerment Finding. EPA initially denied those petitions on January 19, 2021, but later withdrew the denial after determining that its response "did not provide an adequate justification." After reassessing the petitions, EPA issued a new denial in 2022, concluding that the petitions rested on "inadequate, erroneous, and deficient arguments and evidence." EPA explained that the science supporting the Endangerment Finding was "robust, voluminous, and compelling" in 2009. EPA also noted that the 2009 Endangerment Finding had "been strongly affirmed by recent scientific assessments," including the assessments that supported the agency's separate 2016 finding under CAA Section 231(a)(2)(A) that GHG emissions endanger public health or welfare.

The petitioners sought judicial review of EPA's denials, and the cases were consolidated in the D.C. Circuit as *Concerned Household Electricity Consumers Council v. EPA*. There, the petitioners argued "that '[s]cientific research since the adoption of the Endangerment Finding has invalidated' the EPA's earlier conclusions regarding the link between greenhouse gas emissions and climate change." The D.C. Circuit declined to reach the merits of that claim. Instead, the court dismissed on standing grounds because the petitioners failed to show "that they or any of their members have been injured by the Endangerment Finding" or by "a single regulation based on the Endangerment Finding." Petitioners sought Supreme Court review, but the Court declined to hear the case.

Legal Considerations for Revisiting the Endangerment Finding

When EPA revises CAA rules like the Endangerment Finding, CAA Section 307(d) requires that the agency publish notice of the proposed change "accompanied by a statement of its basis and purpose" that summarizes "(A) the factual data on which the proposed rule is based; (B) the methodology used in obtaining and analyzing the data; and (C) the major legal interpretations and policy considerations underlying the proposed rule." EPA must also take public comment on the proposed rule. When it finalizes the rule, EPA must respond "to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period." This process, known as "notice-and-comment rulemaking," typically takes months if not years to complete. The EPA Administrator has been quoted as saying that he "anticipate[s]" going through a notice-and-comment rulemaking to reconsider the Endangerment Finding.

EPA has not identified a basis for revising or rescinding the Endangerment Finding, but the agency has suggested aspects of the Endangerment Finding that it may now view as flawed. For example, in a March 2025 press release, EPA referred to the Endangerment Finding's consideration of six GHGs collectively rather than individually as potentially erroneous, a statement that the EPA Administrator reiterated in comments to Congress. EPA has also stated that "new guidance" on statutory interpretation contained in recent Supreme Court decisions such as *Loper Bright Enterprises v. Raimondo* would inform its reconsideration, as would "major developments in innovative technologies, science, economics, and mitigation."

Any EPA final action to alter (or not alter) the Endangerment Finding would be subject to judicial review. A reviewing court would decide legal questions—including questions of statutory interpretation—"by applying [its] own judgment," without deferring to EPA's views. By contrast, EPA's fact-based policy decisions would be accorded deference, and a reviewing court would ask only whether the agency had "acted within a zone or reasonableness." EPA's basis for acting on the Endangerment Finding would thus determine the standard of review.

Because a revision or repeal of the Endangerment Finding would constitute a change in position, EPA would need to offer a reasoned explanation for its new approach. The Supreme Court has held that, in practice, this requires agencies to consider "serious reliance interests" that are affected by the change. If EPA were to revise or repeal the Endangerment Finding based on "factual findings that contradict those which underlay its prior policy," it would also need to confront the "contrary or inconvenient factual determinations that it made in the past," including, for example, the evidence supporting its 2016 and 2022 reaffirmations of the Endangerment Finding.

EPA action on the Endangerment Finding could call into question the legitimacy of GHG standards for automobiles, power plants, and oil and gas sector facilities, which rely, in part, on the Endangerment Finding. While a repeal of the Endangerment Finding would not, by itself, repeal those later-issued regulations, EPA has announced that it intends to separately reconsider its operative GHG standards. It is uncertain whether or how EPA's reconsideration of the Endangerment Finding will inform its review of those other rules.

Considerations for Congress

Congress could respond in several ways to EPA's reconsideration of the Endangerment Finding should it choose to do so. For example, Congress could legislatively nullify the Endangerment Finding or, conversely, could codify it. Congress could also restrict EPA's authority to act—for instance, by prohibiting EPA's use of appropriated funds to reconsider the Endangerment Finding. More broadly, Congress could provide EPA with specific statutory instruction on whether or how to regulate GHGs under the CAA.

Alternatively, Congress could shape EPA's reconsideration process by altering applicable procedural requirements or by requiring EPA to weigh certain policy or economic considerations when deciding whether to modify the Endangerment Finding. The Employment Protection Act of 2011 (S. 1292), a bill introduced in the 112th Congress, would have done both of these things.

Or Congress could take a wait-and-see approach. For example, it could let EPA issue proposed changes to the Endangerment Finding and then either direct the EPA Administrator to finalize those proposed changes or, alternatively, prohibit the Administrator from finalizing them. Congress could also wait to act until EPA issues a final rule and then overturn the rule (potentially using the special fast-track procedures provided in the Congressional Review Act) if it disagreed with EPA's changes to the Endangerment Finding.

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