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September 5, 2025

CFACT Comments: EPA's Endangerment Reexamination

U.S. Environmental Protection Agency

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

Submitted via email at a-and-r-Docket@epa.gov

*Founded in 1985 and headquartered in Washington, DC, **The Committee For A Constructive Tomorrow** (CFACT or the Committee) is a nonprofit public policy and educational organization dedicated to protecting both people and planet.*

CFACT is writing today in support of the Environmental Protection Agency's decision to reexamine its highly controversial 2009 "Endangerment Finding" (EF) – and its conclusion that carbon dioxide and other "greenhouse gases" from vehicles and stationary sources "may reasonably be anticipated to endanger" the public health or welfare of American citizens, by causing a "climate crisis" and "more extreme weather."

CFACT fully supports the repeal of all greenhouse gas (GHG) emission standards for light-duty, medium-duty, and heavy-duty vehicles and engines. The Committee further supports the rescission of the entire Endangerment Finding and the faulty medical, scientific, and climate change assertions made by EPA in 2009 to support the EF for both mobile and stationary emission sources.

Unmasking Political Overreach in the 2009 Decision

Having carefully examined the process used to make that finding and observed the Obama and Biden administrations' decisions and actions in the years following the EF, CFACT strongly believes the 2009 decision was politicized, preordained, and made primarily to justify federal government agencies exerting excessive control over fossil fuel production and use; gradually phasing out any use of those fuels; replacing them with wind, solar, battery, and biofuel power; and controlling or limiting the nation's energy, industries, economy, personal consumer choices, and living standards.

Therefore, instead of safeguarding public health and welfare, as explained in these comments and amicus curiae briefs that CFACT submitted to the U.S. Supreme Court, it is EPA's actions that have caused and will cause significant, continuous and irreversible harm to the health and welfare of all Americans, unless the EF is rescinded.

EPA made its Endangerment determination following the U.S. Supreme Court's 5-4 *Massachusetts v. Environmental Protection Agency* decision (2007). However, CFACT lawyers and many other experts have noted that the 1970 Clean Air Act (CAA) never mentions carbon dioxide as a dangerous "criteria pollutant" warranting agency regulation and control, and EPA therefore had no authority to unilaterally label it as such.

Simply put, neither Section 202(a) nor any other provision of the CAA authorizes EPA to prescribe GHG emission standards to address global climate change concerns.

Challenging the Mislabeling of CO₂ as a Pollutant

Moreover, Congress rejected multiple opportunities to add CO₂ or other GHGs to that list of dangerous pollutants, because carbon dioxide clearly doesn't belong there and the role of CO₂ and other GHGs in driving climate change is relatively insignificant. A greater role is supported primarily by computer models that do not reflect observed or measured climate changes, weather patterns or historical records.

Plants absorb carbon dioxide, use it as a building block to grow, and emit oxygen as a byproduct. Humans and animals inhale that oxygen and exhale carbon dioxide. Rising CO₂ levels help crops, grasslands, and forests grow better, faster, and with less water. Indeed, without this "miracle molecule" – this trace gas (0.04% of the atmosphere) – nearly all life on Earth would cease to exist. Calling carbon dioxide, a dangerous pollutant is clearly absurd.

In addition, permitting EPA to label it as such would give the agency the rationale, justification, and authority for regulating not just vehicles, but almost any activity that uses or burns carbon or hydrocarbon energy, or otherwise emits GHGs – including our housing, food production, transportation, and virtually every other component of our lives, livelihoods, well-being, and modern standards of living.

Economic Harm from Overregulation

That is precisely what the agency did under Presidents Obama and Biden. Those actions resulted in significant energy shortfalls; the spending of countless billions of dollars on vehicle emission and fuel economy modifications; spending incalculable more billions on expensive and unreliable “renewable” energy; and inflicting major price increases and disruptions throughout our economy.

The EF was almost without doubt the most egregious regulatory overreach in American history.

Americans gradually realized that our health and welfare are not threatened by carbon dioxide, other greenhouse gases, or the climate and weather changes that EPA claimed were caused by the emission of these manmade gases into the Earth’s atmosphere.

Our health and welfare are put at risk by the actions of EPA and other government regulators that have increasingly reduced the availability, reliability, and affordability of the fossil fuel energy and building blocks that modern societies require to survive.

Supreme Court Checks on Agency Power

The Supreme Court also began to recognize these realities in decisions rendered since 2007, as it steadily reined in the discretionary authority of increasingly powerful and intrusive government agencies.

A) In 2015, the Court ruled in *Michigan v. Environmental Protection Agency* that federal administrative agencies must engage in “reasoned decision-making.” They must consider *all relevant factors, including costs*, that utility steam-generating units and other power plants would incur as a result of more stringent mercury, particulate and greenhouse gas air quality regulations implemented by the agency.

In implementing its 2009 Endangerment Finding, EPA clearly did not consider the enormous vehicle, economic, ecological, or even health and welfare costs of the actions that would follow in its wake.

B) The Court tightened its restrictions in 2022 by establishing the “major questions doctrine.” The Court’s ruling that year in *West Virginia v. EPA* stated that federal agencies may not make decisions or issue regulations “of vast economic and political significance,” unless they have *clear congressional direction or authorization to do so*.

Congress never authorized EPA to regulate carbon dioxide or *the entire U.S. energy system and economy*. The EF and regulations implemented in its wake thus clearly violate the “major questions” doctrine.

C) Most recently, last year's decision in *Loper Bright v. Raimondo* ended the longstanding "Chevron doctrine" that effectively commanded courts to defer to almost any government agency interpretations of statutes that the agencies find are unclear or incomplete in their application to specific cases. Consequently, agencies may no longer devise "reasonable interpretations" of unclear statutory language, if those interpretations significantly expand regulatory powers or inflate private sector costs.

EPA's actions under the Endangerment Finding certainly violate both of those prohibitions, as well.

Further Reinforcing CFACT's Legal and Scientific Critique

CFACT believes these Supreme Court decisions clearly apply to this overdue reexamination of the EF and all other sources of carbon dioxide and other greenhouse gases. The Committee also calls your attention to points made in amicus curiae briefs it submitted to the United States Supreme Court in *Southeastern Legal Foundation v. EPA* (2013) and the *State of Missouri, et al. v. Joseph R. Biden, Jr., et al.* (2021).

We hereby incorporate the most important points from those amicus briefs into our official comments to EPA for Docket ID No. EPA-HQ-OAR-2025-0194.

The first brief addressed the Endangerment Finding directly, with a focus on stationary sources but applying legal and scientific concepts that apply equally to cars, trucks, and other mobile sources. The second amicus focused on what might be called the EF's "wicked stepsister" – efforts by the Biden White House and multiple federal agencies (the Interagency Working Group or IWG) to justify the EF by highlighting the alleged "social costs of carbon" (and carbon dioxide), while ignoring the significant *benefits* of carbon-based fuels, petrochemical feedstocks and carbon dioxide.

Although the briefs were written several years ago, the points they make remain valid and the problems they identify became worse in the ensuing years, until 2025. The amicus briefs underscore the following points, which are addressed in detail in those documents.

- **Unconstitutional Power Grab:** EPA's attempt to regulate greenhouse gas emissions from stationary and mobile sources without clear authorization from Congress, to accomplish its preferred policy objectives of eliminating fossil fuel production and use and controlling the climate, violates the Separation of Powers doctrine.
- **Flawed Science Behind the EF:** EPA's Endangerment Decision is arbitrary, contrary to what is now recognized as mainstream science, and improperly based on faulty United Nations Intergovernmental Panel on Climate Change (IPCC) analyses. It ignores empirical data and extensive studies that contradict agency interpretations and cannot support such a dramatic expansion of government agency regulatory authority.
- **Ignoring Adverse Impacts:** EPA impermissibly failed to consider the adverse impacts that its Endangerment Finding and greenhouse gas regulations would increasingly have

on human health and welfare, wildlife, wildlife habitats, and the American and global land, air, and water environments.

- **No Global Benefit:** Even full compliance with EPA's carbon dioxide and greenhouse gas rules would achieve zero global benefits. Emissions from other countries will continue to increase atmospheric GHG levels as their economies grow and their fossil fuel use increases. EPA's analyses failed to consider this, or the fact that much of the recent, ongoing, and future increases are largely a transfer of emissions from the United States to other countries that are or will be replacing mining, processing, manufacturing, and other activities that once took place in the USA. These activities are moving overseas as a result of EPA's Endangerment Finding and the regulations and mandates implemented subsequent to the EF.
- **One-Sided Cost Analysis:** EPA and the government's Interagency Working Group improperly chose to focus only on alleged U.S. and global costs of U.S. carbon dioxide and other greenhouse gas emissions from America's fossil fuel use in mobile and stationary technologies. A competent, valid, complete analysis must also assess (a) *global* emissions of those gases and (b) the significant U.S. and global *benefits* of those fuels and carbon dioxide emissions from other nations worldwide.
- **Environmental and Economic Costs of Renewables:** Attempting to replace America's hydrocarbon-based energy systems with wind, solar, and battery technologies – and to expand and upgrade the nation's electrical systems – to operate vehicles, factories, and other technologies, would cost trillions of dollars and result in major environmental, wildlife, economic, scenic, and human health damage from installing new facilities across the United States and along its ocean and Great Lakes coasts. It would cause further damage to human health and welfare by making energy (and thus vital products and services) less available, reliable, and affordable for millions of Americans. The EPA and IWG failed to mention or address these costs.
- **Global Resource Exploitation:** Attempting to transform America's motor vehicles and energy system to wind, solar, battery and other "renewable" energy technologies and associated transmission systems would require metals, plastics, concrete, and other materials on scales unprecedented in human history. Mining, processing, and refining ores and other raw materials, and operating factories to turn them into "green" energy equipment, would result in major environmental, wildlife, scenic, and human health damage throughout the world. The EPA and IWG likewise failed to examine these consequences of the Endangerment Finding and Social Cost of Carbon calculations.
- **National Security Risks:** Because the United States increasingly restricts mining, most of the raw materials needed for any "renewable energy transformation" will be extracted and processed overseas, predominantly by Chinese companies, under minimal to nonexistent environmental, workplace safety, and child labor rules. This raises serious national security, toxic pollution, human rights, and environmental justice issues that must be addressed in any competent, valid, complete EPA and IWG analysis.
- **Rising Energy Poverty:** Emerging economies (modernizing overseas countries) are rapidly increasing their carbon-based fuel use and greenhouse gas emissions, as they industrialize, improve their people's living standards, and provide renewable energy materials and technologies to the United States. Therefore, even if the United States

completely eliminated its fossil fuel use and GHG emissions for vehicles and stationary sources, there would be *no global emission or climate benefits* – even if carbon dioxide is a major factor in causing climate changes and extreme weather. The EPA and IWG ignored this fact.

- **Health Risks from Policy:** Climate policies strongly correlate with energy poverty and with energy prices rising above families’ ability to stay warm or cool at reasonable cost given their incomes. The illnesses and deaths caused by such policies must be addressed by any competent and complete EPA and IWG analysis, but were not.

Call for a Thorough Reassessment

CFACT is confident that the Environmental Protection Agency will fully consider all these factors in its reassessment of the 2009 Endangerment Decision, as applied to mobile and stationary sources alike.

We are also confident that EPA’s review will carefully examine: (1) the problems with assertions that humanity and our planet face temperature, climate, and weather catastrophes; (2) the accuracy and reliability of studies and computer models that the Obama and Biden EPA relied on to support claims that a worsening climate crisis is imminent or already impacting humanity; and (3) the numerous studies by eminent scientists around the world who have concluded that the climate models are deficient, and the evidence and data do not reflect an ongoing or impending climate crisis tied to emissions from motor vehicles and stationary sources of carbon dioxide and other greenhouse gases.

The Committee does not address these temperature, climate, or weather computer modeling issues in these comments or its amicus briefs, except in passing. However, we expect that many other comments will do so in detail and call your attention to these issues.

Debunking Climate Crisis Claims with Data

We will simply note that temperature increases during much of the modern industrial era are largely attributable to the Earth coming out of its 500-year Little Ice Age, which was preceded by a 300-year-long Medieval Warm Period, both of which were caused by variability in solar output, cloud cover, and other natural forces. Moreover, most U.S. high temperature records were set in the 1930s, not recently.

We also note that Western Hemisphere hurricanes show no pattern or evidence of increasing frequency or intensity. The online database of Category 1-5 U.S. landfalling hurricanes, “Continental United States Hurricane Impacts/Landfalls 1851-2024,” compiled by the Hurricane Research Division of the National Oceanographic and Atmospheric Administration’s Atlantic Oceanographic and Meteorological Laboratory, demonstrates this clearly and convincingly. It also shows that the United States was blessed by a record 12-year period, 2005-2017, when no Category 3-5 hurricanes made landfall.

U.S. records also show a significant *downward* trend in the number of strong EF2-EF5 tornadoes since 1950 – as summarized in Joe D’Aleo and Roy Spencer’s 2024 report, *Twisters and Trends: An Analysis of U.S. Tornado Activity and Climate Change*. And despite news stories constantly attempting to correlate extreme weather with manmade climate change, U.S. and global records have likewise shown no increase in the frequency or intensity of floods and droughts over recent decades.

Recommended Scientific Resources

Among the many excellent compendiums of studies reflecting realistic and non-alarming assessments of America’s and the world’s climate and weather are *Climate Change Reconsidered II: Physical Science* (2013), by the Nongovernmental International Panel on Climate Change; *Unsettled: What Climate Science Tells Us, What It Doesn’t, and Why It Matters* (2021), by Steven E. Koonin; *Inconvenient Facts: The Science that Al Gore Doesn’t Want You to Know* (2017), by Gregory Wrightstone; and *Hot Talk, Cold Science: Global Warming’s Unfinished Debate* (2021, Third Edition), by S. Fred Singer, David R. Legates and Anthony R. Lupo.

Those volumes and many others provide excellent summaries and hundreds of references to original scientific source material about climate history and reality, as supported by actual data, evidence, and science. We highly recommend them and note that they persuasively contradict claims that carbon dioxide and other greenhouse gases are primary factors in planetary climate change, and claims that those gases are causing an imminent or ongoing climate crisis.

We formally bring them to your attention and hereby incorporate those documents into our official comments to EPA for Docket ID No. EPA-HQ-OAR-2025-0194.

Conclusion: CFACT Fully Supports EPA’s Reexamination

In conclusion, the Committee For A Constructive Tomorrow agrees with and fully supports the Environmental Protection Agency in reexamining the Agency’s controversial and erroneous 2009 finding that carbon dioxide “endangers” the public health and welfare of American citizens.

We trust that these comments and the above-referenced amicus curiae briefs and other documents will be helpful in EPA’s reassessment of the 2009 Greenhouse Gas Endangerment Finding; its proposed rescission or removal of GHG regulations for light-, medium- and heavy-duty vehicles; and any similar action to rescind GHG regulations applicable to electricity generating plants, factories and other stationary sources.

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