



The Future of Climate Change Regulation and Litigation After EPA's Repeal of the Endangerment Finding

This article was published in the April 2026 issue of *Insights*.

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Key Points

- EPA has rescinded a 2009 finding that six greenhouse gases endanger public health and welfare. The finding was the basis for regulating GHG emissions from new vehicles and was also cited in other EPA GHG regulations.
- EPA now asserts that Section 202(a) of the Clean Air Act only covers pollutants causing regional — not global — air pollution, and that the link between vehicle GHG emissions and public health is too attenuated to justify regulation under this section.
- In addition to the impact on vehicles, the rescission lends support to the Trump administration's moves to roll back emission limits for power generation, and oil and gas operations.
- The rescission may open the door for increased state-level regulation and climate-related civil litigation, especially because EPA's position that it does not have authority to regulate GHGs under the CAA undercuts arguments that the CAA preempts against GHG-based state laws and tort claims.

The Environmental Protection Agency (EPA) has rescinded a 2009 finding (the endangerment finding) that emissions from six greenhouse gases (GHGs)¹ endanger public health and welfare, and that such emissions from new vehicles contribute to this endangerment.

Exactly how far-reaching the February 18, 2026, rescission will be remains to be seen, especially given the lawsuits that have been filed challenging the decision. Moreover, while EPA is moving forward with efforts to roll back even those GHG regulations that were not directly repealed, states and local governments are expanding climate regulatory action, and the rescission may encourage more GHG based tort claims.

¹ Carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

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The History of the Endangerment Finding

The endangerment finding traces back to 1999, when environmental organizations petitioned EPA to set standards for GHG vehicle emissions under Section 202(a) of the Clean Air Act (CAA). After years of litigation, the U.S. Supreme Court ruled in 2007 in *Massachusetts v. EPA* that GHGs were within the CAA definition of an “air pollutant.” The Court further held that EPA must determine whether GHGs endanger the public health and, if so, regulate them for new vehicles or provide a valid scientific reason for not doing so.

In response, EPA issued the endangerment finding in 2009, concluding that GHG emissions endanger public health due to their contributions to global warming. Judicial challenges to the finding were rejected by the U.S. Court of Appeals for the District of Columbia Circuit in 2012 and again 2023, and in each case the U.S. Supreme Court declined to hear appeals of those decisions.

The Basis for the Rescission

EPA rescinded the endangerment finding because it concluded that the finding was based on an incorrect reading of the CAA. Specifically, EPA found that Section 202(a) requires EPA to regulate air pollutants that endanger public health through regional air pollution, whereas the endangerment finding was premised on an increase in global temperatures due to GHGs. The link between such temperature increases and public health impacts, EPA concluded, was too attenuated to render such emissions “air pollution” within the meaning of Section 202(a).

EPA also argued that Section 202(a) requires the agency to conclude that the regulated pollutants endanger public health and that emissions of those pollutants from specific vehicle categories cause or contribute to air pollution. EPA concluded that the endangerment finding did not make both of these findings and therefore was insufficient.

EPA also determined that its regulations limiting GHG emissions from new motor vehicles have not and cannot have any material impact on global climate change, and that this futility independently warrants the rescission, because the resulting regulations impose immense burdens without furthering any statutory objective.

The Rescission's Regulatory Impacts

The rescission of the endangerment finding directly eliminated all EPA standards for GHG emissions from light-, medium- and heavy-duty motor vehicles sold in the U.S., as well as all regulatory obligations directly tied to EPA's GHG standards for vehicles, including:

- GHG testing and measurement requirements.
- Manufacturer reporting and certification obligations.
- Programs related to GHG credits.

Beyond the direct rescission of these standards and requirements, the rescission of the endangerment finding threatens the legal basis for EPA's rules — proposed or enacted under the previous administration

— regulating GHG emissions from other industries, including coal- and gas-fired power generation and methane emissions from oil and gas operations.

Under the second Trump administration, EPA has begun administrative proceedings to withdraw or repeal these regulations. The rescission of the endangerment finding provides further legal support for such actions.

Potential Opening for Other Avenues of Climate Action

While the rescission of the endangerment finding directly and indirectly undermines federal regulations of GHG emissions, it may open avenues for state regulatory action and climate-related civil litigation seeking monetary and injunctive relief against large GHG emitters.

Numerous states have recently enacted or are considering so-called “climate change superfund laws” that would require large emitters of GHG to pay for damages allegedly arising from GHG emissions. In states where these laws have been enacted, there are pending challenges to the laws on numerous grounds, including arguments that the CAA preempts state regulation of GHG emissions.

Likewise, numerous lawsuits asserting tort claims against large emitters of GHG emissions have been dismissed on the grounds that they are preempted by EPA's authority to regulate GHG emissions under the CAA. In both the challenges to state legislation and civil litigation, these preemption arguments are likely to fail if EPA does not have the authority to regulate GHG emissions under the CAA.

What Happens Next

Lawsuits challenging the rescission of the endangerment finding have already been filed, and it will likely take several years for that litigation to be resolved. While the finding has twice been upheld by the courts, in rescinding it, EPA noted that, since the Supreme Court's 2007 ruling in *Massachusetts v. EPA*, several cases have cast doubt on EPA's ability to regulate GHG under the CAA:

- *Utility Air Regulatory Group v. EPA*: The CAA does not permit EPA to impose permitting requirements solely on the basis of a facility's GHG emissions.
- *West Virginia v. EPA*: The CAA does not permit EPA to impose emission limitations based on shifts in how power is generated.
- *Loper Bright Enterprises v. Raimondo*: Courts must exercise independent judgment, rather than deferring to an agency, when determining if the agency has acted within its authority.

These decisions make it difficult to predict whether the rescission of the endangerment finding will survive judicial review. In the meantime, EPA is expected to continue its ongoing efforts to roll back GHG regulations that were not directly repealed by the rescission of the endangerment finding, while efforts by climate advocates may shift to state regulatory action and tort-based litigation.