

**Comments of the States of California, Washington, Colorado, Connecticut, Delaware,
Hawai‘i, Illinois, Massachusetts, Maryland, Minnesota, New Jersey, New York, Oregon,
Rhode Island, and Vermont, the District of Columbia, and the Chief Legal Officers of the
City of Chicago and the City of New York**

on the

**Proposed Reconsideration of the Greenhouse Gas Reporting Program, 90 Fed. Reg. 44,591
(Sept. 16, 2025)**

EPA-HQ-OAR-2025-0186

November 3, 2025

INTRODUCTION

The States of California—on behalf of the Attorney General and the California Air Resources Board—Washington, Colorado, Connecticut, Delaware, Hawai‘i, Illinois, Massachusetts, Maryland, Minnesota, New Jersey, New York, Oregon, Rhode Island, and Vermont, the District of Columbia, and the Chief Legal Officers of the City of Chicago and the City of New York (collectively, State and Local Governments) submit these comments in opposition to the U.S. Environmental Protection Agency’s (EPA) proposal to terminate or delay emission reporting under the Greenhouse Gas Reporting Program, 90 Fed. Reg. 44,591 (Sept. 16, 2025) (Proposal).

The Proposal represents yet another attempt by the current federal administration to undermine climate action and prioritize a narrow set of corporate interests at the expense of broader economic prosperity. The scientific consensus is clear: greenhouse gas emissions linked to human activity, particularly fossil fuel use, are contributing to a warming planet and extreme weather events.¹ And failing to collect information about its causes will not make climate change go away—it will only make the United States unprepared to address its causes and consequences and less competitive with other nations that acknowledge and collect data on the severe threats it poses. The Proposal is a blatant attempt to hide the actions of the most egregious corporate climate polluters in the United States from public scrutiny. It entirely ignores the Clean Air Act’s purpose “to protect and enhance the quality of the Nation’s air resources,” 42 U.S.C. § 7401, and fails to provide an even remotely adequate rationale for ceasing to collect data about the most pressing environmental threat facing the Nation.

EPA’s Greenhouse Gas Reporting Program (GHGRP) is comprised of the reporting requirements and the reporting tool known as e-GGRT. It is the only system for tracking large industrial facilities’ and certain suppliers’ greenhouse gas (GHG) emissions on a facility-by-facility and corporation-by-corporation level in the United States, enabling granular and aggregated analysis of GHG emissions across the U.S. economy. The GHGRP has been recognized as “the most comprehensive national inventory of greenhouse gas data in the world,”² and the “gold standard of emissions reporting.”³ It is used across the federal government as well as by state and local governments to prioritize, design, evaluate, and implement GHG reduction policies and programs. In addition, our State and Local Governments rely on the GHGRP data as a starting point for tracking GHG emissions and assessing compliance with our own reporting and other regulatory programs.

¹ California Air Resources Board, Comments on A Critical Review of Impacts of GHG Emissions on the U.S. Climate (Sept. 2, 2025) (DOE-HQ-2025-0207), <https://ww2.arb.ca.gov/sites/default/files/2025-09/CARB-Comments-to-DOE-9-2-25.pdf>.

² Ben Cahill, *Why the Oil Industry Needs the Greenhouse Gas Reporting Program*, UNIV. TEXAS AUSTIN, CTR. FOR ENERGY AND ENVTL. SYS. ANALYSIS (July 9, 2025), <https://www.ceesa.utexas.edu/energy-pathways/why-the-oil-industry-needs-the-greenhouse-gas-reporting-program>.

³ Emily Schilling & Ryan Seamons, Holland & Hart LLP, *EPA Proposes Sweeping Rollback of Greenhouse Gas Reporting Program* (Sept. 19, 2025), <https://www.hollandhart.com/epa-proposes-sweeping-rollback-of-greenhouse-gas-reporting-program>.

EPA now attempts to eliminate this critical tool, claiming that it lacks statutory authority under section 114 of the Clean Air Act to maintain the program or, in the alternative, asserting it is appropriate to do so under its discretionary authority on the grounds that the data collected is no longer useful. Yet, both of EPA's rationales are baseless. The best—and only permissible—reading of the statute grants EPA broad authority to collect information, including the information collected by the GHGRP. That is clear under the plain terms of section 114 of the Clean Air Act, and Congress made it crystal clear in 2008 and 2009 legislation specifically requiring EPA to promulgate a rule to require GHG reporting from all sectors. EPA's statutory interpretation argument is a thinly disguised attempt to avoid defending the unreasonableness of the exercise of any discretion it may have to modify the GHGRP. The data collected pursuant to the GHGRP is far from "unnecessary": it is crucial for EPA itself to perform its mandatory statutory duties and it is relied upon by other federal agencies, state and local governments, non-governmental organizations, industry, researchers, and communities to understand and effectively respond to climate change consistent with Congress's direction in the Clean Air Act. EPA's failure to consider the scope and extent of the use of the data collected pursuant to the GHGRP—along with its failures to adequately consider costs and alternatives—renders the Proposal arbitrary and capricious. The Proposal is prejudged, pretextual, and procedurally flawed. EPA cannot evade the law by throwing away the source of data that makes clear how much dangerous air pollution remains. The agency's brazen, head-in-the sand attempt to undermine its own ability to fulfill its statutory obligations and similarly undermine nationwide efforts to combat climate change is unlawful.

BACKGROUND

I. EPA's GHGRP

A. Regulatory History

While EPA has been requiring GHG reporting since 1970, the GHGRP in its current form began in late 2009 after Congress allocated "not less than \$3,500,000 . . . for activities to develop and publish a . . . final rule . . . to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy in the United States." Consolidated Appropriations Act of 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2128 (2008). In the accompanying joint explanatory statement, Congress directed EPA "to use its existing authority under the Clean Air Act to develop and publish" the rule and "to include in its rule reporting of emissions resulting from upstream production and downstream sources." 153 Cong. Rec. 15,742, 16,131 (Dec. 17, 2007). Congress provided an additional \$6,500,000 in 2009 to support the development of EPA's rule and set a deadline of June 26, 2009 for EPA to finalize and "begin implementation" of the rule. 2009 Omnibus Appropriations Act, Pub. L. No. 111-8, 123 Stat. 524, 729 (2009).

In response to Congress's directive, EPA released a final rule that established its Mandatory Greenhouse Gas Reporting Program, which went into effect on December 29, 2009. 74 Fed. Reg. 56,260 (Oct. 30, 2009). EPA thereafter revised the 2009 rule to add technical requirements and

new categories of sources covered by the regulations. *See e.g.*, 75 Fed. Reg. 74,458 (Nov. 30, 2010) (requiring monitoring and reporting of GHG emissions from petroleum and natural gas systems (Subpart W)); 75 Fed. Reg. 74,774 (Dec. 1, 2010) (requiring monitoring and reporting of GHG emissions from additional sources of fluorinated greenhouse gases, such as electronic manufacturing); 75 Fed. Reg. 75,060 (Dec. 1, 2010) (requiring monitoring and reporting of GHG emissions from facilities that conduct geologic sequestration of carbon dioxide and all other facilities that conduct injection of carbon dioxide). In total, the GHGRP covers 47 categories of GHG sources across a wide range of economic sectors.

The rule “requires the reporting of the GHG emissions that could result from the combustion or use of fossil fuel or industrial gas that is produced or imported from upstream sources such as fuel suppliers, as well as reporting of GHG emissions directly emitted from facilities (downstream sources) through their processes and/or from fuel combustion, as appropriate.” 74 Fed. Reg. at 56,264. Additionally, the regulation requires vehicle and engine manufacturers to report emissions rate data on the heavy-duty and off-road engines they produce. *Id.*

EPA stated that it promulgated the rule “to gather GHG information to assist EPA in assessing how to address GHG emissions and climate change under the Clean Air Act.” 74 Fed. Reg. at 56,265. It explained that “[a]ccurate and timely information on GHG emissions is essential for informing many future climate change policy decisions,” and that, “[t]hrough data collected under this rule, EPA, States and the public will gain a better understanding of the relative emissions of specific industries across the nation and the distribution of emissions from individual facilities within those industries.” *Id.*

EPA expected the data collected pursuant to the GHGRP to “prove invaluable to the Agency,” including by informing decisions about whether and how to establish: New Source Performance Standards under section 111 of the Clean Air Act for sources that emit GHGs; mobile source regulations under sections 202, 213, and 231 of the Clean Air Act; fuel regulations under section 211(c) of the Clean Air Act; regulations of motor vehicle air conditioning systems under sections 609 and 612 of the Clean Air Act; and regulations of downstream sources under various other provisions. 74 Fed. Reg. at 56,265, 56,286. Additionally, EPA expected the data would inform EPA’s implementation of section 103(g) regarding improvements in non-regulatory strategies and technologies for preventing and reducing air pollutants, such as EPA’s voluntary GHG reduction programs. *Id.* at 56,286.

EPA promulgated the rule pursuant to sections 114 and 208 of the Clean Air Act, explaining that those sections “provide EPA broad authority to require the information mandated by this rule because such data will inform and are relevant to EPA’s carrying out a wide variety of [Clean Air Act] provisions.” 74 Fed. Reg. at 56,264; *see id.* (“EPA interpreted th[e] language [in the Consolidated Appropriations Act of 2008] to confirm that it was appropriate for the Agency to exercise its [Clean Air Act] authority to develop th[e] rulemaking.”); *see e.g., id.* at 56,265 (explaining that “emissions from direct emitters should inform decisions about whether and how to use [Clean Air Act] section 111 to establish new source performance standards (NSPS) for various source categories emitting GHGs” and “should support decisions regarding treatment of

[mobile] sources under [Clean Air Act] sections 202, 213, 231”). The regulations implementing the GHGRP are at 40 C.F.R. Part 98, and have been directly incorporated into subsequent legislation by Congress.

B. Legislative History of Clean Air Act Section 114(a)

Congress enacted section 114(a) of the Clean Air Act in the Clean Air Act Amendments of 1970. Congress authorized EPA’s Administrator to “require the owner or operator of any emission source to establish and maintain such records, make such reports, . . . and provide such other information as he may reasonably require,” among other things. Pub. L. No. 91-604, 84 Stat. 1676, 1687 (1970). Congress provided EPA this authority for the purposes “(i) of developing or assisting in the development of any implementation plan under section 110 or 111(d), any standard of performance under section 111, or any emission standard under section 112, (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) [of] carrying out section 303.” *Id.*

Over the next two decades, “Congress repeatedly expanded EPA’s authority under section 114.” EPA’s Responses to Public Comments on its Mandatory Greenhouse Gas Reporting Rule, Vol. 9, *Legal Issues*, at 13 (Sept. 2009) (EPA-HQ-OAR-2008-0508-2264) (RTC Vol. 9). In 1974, Congress enabled EPA to use section 114 to additionally carry out the purposes of section 119. Pub. L. No. 93-319, § 6, 88 Stat. 246, 259 (1974). In the Clean Air Act Amendments of 1977, Congress struck “carrying out section 119 or 303” and instead authorized EPA to use its section 114 authority to carry out “*any provision of this Act* (except with respect to a manufacturer of motor vehicles or motor vehicle engines).” Pub. L. No. 95-95, § 305(d)(1), 91 Stat 685, 776, (1977) (emphasis added). Also in 1977, Congress empowered EPA to collect information from “*any person subject to any requirement of this Act* (other than a manufacturer subject to the provisions of section 206(c) or 208),” in addition to any person “who owns or operates any emission source.” *Id.* § 305(d)(2) (emphasis added); Safe Drinking Water Amendments of 1977, Pub. L. No. 95-190, § 14(a)(23), 91 Stat. 1393, 1400, (1977). In the Clean Air Act Amendments of 1990, Congress further enabled EPA to collect information from “any person . . . who manufacturers emission control or process equipment” and “who the Administrator believes may have information necessary for the purposes set forth in this subsection.” Pub. L. No. 101-549, § 702(a)(3), 104 Stat. 2399, 2680 (Nov. 15, 1990). At that time, Congress also empowered EPA to utilize its section 114 authority “on a one-time, periodic or continuous basis,” and it expanded the actions EPA may take pursuant to section 114(a), including requiring persons to “provide such other information as the Administrator may reasonably require.” *Id.*

C. Requirements of EPA’s GHGRP

EPA’s GHGRP requires owners and operators of facilities that contain listed source categories and suppliers in listed categories to follow procedures for the calculation, recordkeeping, and annual reporting of their GHG⁴ emissions. 40 C.F.R. §§ 98.2, 98.3. EPA’s GHGRP is codified in

⁴ The GHGs that owners and operators are required to report include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, sulfur hexafluoride, perfluorinated compounds, and other fluorinated gases.

40 C.F.R. Part 98: Subpart A contains general reporting requirements that apply to owners and operators of facilities and suppliers covered by the regulations, while Subparts B-UU contain requirements for the calculation of total annual GHG emissions, monitoring, recordkeeping, and reporting, which are tailored to each source category. *See, e.g.*, 40 C.F.R. § 98.43 (providing the methodologies to calculate CO₂, CH₄, and N₂O emissions and to calculate biogenic CO₂ emissions).

The GHGRP regulations apply to owners and operators of facilities that (i) contain any listed source category, *see* 40 C.F.R. Part 98, Subpart A, Tables A-3, A-4 (listing cement production, petroleum refineries, electronics manufacturing, etc.), or (ii) emit 25,000 metric tons of carbon dioxide (CO₂) equivalent or more per year in combined emissions from all stationary fuel combustion sources and have an aggregate maximum rated heat input capacity of 30 mmBtu per year or greater for their stationary fuel combustion units. 40 C.F.R. § 98.2(a). The regulations also apply to all listed suppliers. *Id.*; *see* 40 C.F.R. Part 98, Subpart A, Table A-5 (listing petroleum product suppliers, industrial greenhouse gas suppliers, etc.).

In general terms, this means that the GHGRP requirements apply to: (1) owners and operators of direct sources of GHG emissions that emit at least 25,000 metric tons of CO₂-equivalent per year, (2) fuel and industrial gas suppliers, (3) owners and operators of facilities with underground CO₂ injection wells, and (4) suppliers of coal and natural gas, petroleum products, CO₂, and other industrial GHGs.⁵ 40 C.F.R. § 98.2. Some owners and operators of facilities are covered regardless of whether their facilities emit 25,000 tons of CO₂ equivalent or more per year, such as electricity generation facilities, facilities engaged in aluminum production, cement production, and some municipal solid waste landfills.⁶ *Id.*

Owners and operators of covered facilities must report “[a]nnual emissions (excluding biogenic CO₂) aggregated for all GHG[s] from all applicable source categories,” “[a]nnual emissions of biogenic CO₂ aggregated for all applicable source categories,” “[a]nnual emissions from each applicable source category” for each applicable GHG,” and “emissions and other data for individual units, processes, activities, and operations.” 40 C.F.R. § 98.3(c)(4)(i)-(iii), (5)(iii). Covered suppliers must report “emissions and other data for individual units, processes, activities, and operations.” *Id.* § 98.3(c)(4)(iv). The reports must include a variety of additional data—such as a facility or supplier’s name and physical address, information regarding parent companies, and NAICS codes—and use the emissions calculation methods specified in relevant subparts. 40 C.F.R. §§ 98.3(c)(1), 98.3(e).

Owners and operators of facilities that are required to report GHGs must retain all records for at least 3 years from the date of submission of the annual report, and EPA is authorized to conduct

⁵ ANGELA C. JONES, CONG. RSCH. SERV., IF11754, 1, EPA’S GREENHOUSE GAS REPORTING PROGRAM (Feb. 4, 2021) [hereinafter “GHGRP CRS Report”]; *Reporting Requirements*, UNITED NATIONS CLIMATE CHANGE: TRANSPARENCY AND REPORTING [hereinafter “UN Reporting Requirements”], <https://unfccc.int/process-and-meetings/transparency-and-reporting/reporting-and-review-under-the-convention/greenhouse-gas-inventories-annex-i-parties/reporting-requirements>, (last visited Oct. 21, 2025).

⁶ *Id.*

periodic audits of reporting facilities to verify the accuracy of reported GHG emissions. 40 C.F.R. §§ 98.3(f), 98.3(g).

II. THE IMPORTANCE OF THE GHGRP

A. The long-term data set collected by the GHGRP is uniquely valuable

The GHGRP has been recognized as “the most comprehensive national inventory of greenhouse gas data in the world,”⁷ and the “gold standard of emissions reporting.”⁸ It is used by EPA, other federal agencies, and numerous state and local governments in emissions inventories, policy development, trading programs, and tax credits, among other uses. Many state and local governments in particular rely on these inventories to assess compliance with their statutory, regulatory, or policy-based GHG emission reduction goals, as described below in more detail in Background Section II.D.3 and Argument Section III.B. In addition, as scrutiny of GHG emissions has grown, investors, environmental organizations, consultants, journalists, and others have turned to the GHGRP as an authoritative and reliable source to assess GHG emissions of covered facilities, sources, or sectors, and to contextualize GHG emissions levels by comparing different sources or sectors with each other and to overall U.S. GHG emissions.⁹

Three major factors make the data collected by the GHGRP highly valuable. First, the GHGRP has developed a very robust and growing long-term data set, providing transparent, comparable data across sources and geographic areas and over time. The GHGRP framework requires the submission of detailed data backing up the calculations used to arrive at the emissions reports and requires companies to report emissions across operating areas and segments. This underlying data is available to the public to review the basis for the emissions reports, subject to certain protections for confidential business information.¹⁰ 42 U.S.C. § 7414(c); *see* 40 C.F.R. §§ 2.201–2.311.

EPA publishes various data sets and tools as well as sector summaries and highlights.¹¹ This allows policy-makers and government decision-makers at all levels of government (federal, state, and local) as well as the public to drill down on the emissions numbers and analyze emissions quantities and trends across time and geography. On its website, EPA recognizes the broad utility of the GHGRP data: “[t]his data can be used by businesses and others to track and compare facilities’ greenhouse gas emissions, identify opportunities to cut pollution, minimize wasted energy, and save money. States, cities, and other communities can use EPA’s greenhouse gas data

⁷ Cahill, *supra* n.2.

⁸ Schilling & Seamons, *supra* n.3.

⁹ *See* Cahill, *supra* n. 2; *see also* Mariam Al-Shamma, *BPC Response to EPA’s Reconsideration of the Greenhouse Gas Reporting Program*, BIPARTISAN POLICY CENTER (Oct. 22, 2025), <https://bipartisanpolicy.org/letter/bpc-response-to-epas-reconsideration-of-the-greenhouse-gas-reporting-program/>.

¹⁰ *Confidential Business Information for GHG Reporting*, U.S. ENV’T PROT. AGENCY: GREENHOUSE GAS REPORTING PROGRAM (GHGRP) (June 5, 2025), <https://www.epa.gov/ghgreporting/confidential-business-information-ghg-reporting> [<https://perma.cc/WA3K-F2DS>] (“Data collected under the Greenhouse Gas Reporting Program must be available to the public unless the data qualify for confidential treatment under the Clean Air Act.”)

¹¹ *Sector Data Sets*, U.S. ENV’T PROT. AGENCY: GREENHOUSE GAS REPORTING PROGRAM (GHGRP), <https://www.epa.gov/ghgreporting/sector-data-highlights> [<https://perma.cc/857L-UHJB>].

to find high-emitting facilities in their area, compare emissions between similar facilities, and develop common-sense climate policies.”¹² Accordingly, EPA provides highlights and “data visualizations of reported GHG emissions by trends, gas, location, and ranges for the most recent reporting year” on its website for general use.¹³

While some private reporting methods can vary between regions or change over time, EPA’s GHGRP provides a consistent measuring stick. For example, even as more oil and gas companies have shifted toward direct measurement rather than estimates of GHG emissions based on emissions factors, the GHGRP dataset remains comparable across the full range of companies and facilities in the sector.¹⁴

Second, the GHGRP provides comprehensive coverage of fuel-related and facility-level emissions at the national level. The program applies to all significant sources throughout the country covering the vast majority of U.S. GHG emissions. This allows comprehensive analysis of nationwide greenhouse gas emissions across the full range of facilities, sectors, and companies.

Third, as a result of the GHGRP’s comprehensive coverage, the data allows an assessment of a sector or category as a percentage of nationwide emissions at any given point in time—critical context for policymaking decisions for each sector or category when deciding which make sense to regulate in various ways. Similarly, for individual sources, assessments of the source’s contribution to GHG emissions can be analyzed as a percentage of overall emissions within more limited geographical ranges or within sectors or subsectors. Such comparative analysis would be impossible without a regular, systematic, economy-wide data collection program like the GHGRP.

B. EPA Uses the GHGRP Data to Implement the Clean Air Act

EPA has used the GHGRP data extensively in a variety of ways in the over fifteen years since it began collecting GHG emissions data through the program, including to implement key provisions of the Clean Air Act. EPA has used the data in prioritizing, designing, evaluating, and implementing GHG mitigation policies, including evaluating and developing New Source Performance Standards for new and existing sources under section 111 of the Clean Air Act, and Clean Air Act voluntary GHG reduction programs, among others purposes.¹⁵ Importantly, this data has been a critical tool in helping EPA decide how to better allocate resources and prioritize which sectors to regulate first, including by providing the data necessary to understand which sectors have declining versus increasing emissions.

¹² *What is the GHGRP?*, U.S. ENV’T PROT. AGENCY: GREENHOUSE GAS REPORTING PROGRAM (GHGRP) (Dec. 23, 2024), <https://www.epa.gov/ghgreporting/what-ghgrp> [<https://perma.cc/G4DB-2VVK>] (Aug. 14, 2025).

¹³ *Find and Use GHGRP Data*, U.S. ENV’T PROT. AGENCY: GREENHOUSE GAS REPORTING PROGRAM (GHGRP), (Aug. 6, 2025), <https://www.epa.gov/ghgreporting/find-and-use-ghgrp-data> [<https://perma.cc/UZ6M-EBKB>].

¹⁴ Cahill, *supra* n.2.

¹⁵ GHGRP CRS Report, *supra* n.5, at 1.

When EPA adopted the GHGRP Rule in 2009 in response to Congressional direction, it recognized the need for, and extensive potential uses of, such comprehensive and robust data in carrying out several of its statutory purposes under the Clean Air Act. 74 Fed. Reg. at 56,264-65, 56,286. From 2009 until this Proposal, EPA has recognized that “[a]ccurate and timely information on GHG emissions is essential for informing many future climate change policy decisions.” *Id.* at 56,265. In fact, EPA promulgated its 2009 rule creating the GHGRP for the express purposes of gathering “GHG information to assist EPA in assessing how to address GHG emissions and climate change under the Clean Air Act.” *Id.* at 56,266. EPA explained then that “emissions from direct emitters should inform decisions about whether and how to use [Clean Air Act] section 111 to establish new source performance standards (NSPS) for various source categories emitting GHGs, including whether there are any additional categories of sources that should be listed under [Clean Air Act] section 111(b).” *Id.* at 56,265. This is exactly what EPA has done. EPA has used GHGRP data extensively for subsequent regulatory decisions including “to inform the development of new source performance standards (NSPS) and emission guidelines (EG) under [Clean Air Act] section 111 for oil and natural gas facilities (81 Fed. Reg. 35,824 (June 3, 2016)), municipal solid waste landfills (81 Fed. Reg. 59,332 (Aug. 29, 2016)), and fossil-fuel fired electricity generating units (89 Fed. Reg. 39,798 (May 9, 2024)).” 90 Fed. Reg. at 44,598. In addition, EPA uses GHG emissions information from fuel suppliers to analyze “whether to proceed, and particular options for how to proceed, under [Clean Air Act] section 211(c) regarding fuels, or to inform action concerning downstream sources under a variety of Title I or Title II provisions,” under the Clean Air Act. 90 Fed. Reg. at 44,598. While EPA has proposed to cease regulating GHG emissions from various sources, those proposals, like this one, are arbitrary and capricious and contrary to law.¹⁶

EPA also continues to need the GHG data collected in the GHGRP for “implementation of [Clean Air Act] section 103(g) regarding improvements in non-regulatory strategies and technologies for preventing or reducing air pollutants.” 74 Fed. Reg. at 56,265, 56,286. Indeed, EPA has launched a variety of nonregulatory programs aimed at reducing emissions of GHGs, including Climate Leaders, ENERGY STAR, AgSTAR, the Coalbed Methane Outreach Program, the Natural Gas STAR Program, and the Landfill Methane Outreach Program, as well as voluntary partnerships with particular industries to reduce high global warming potential (GWP) GHG emissions.¹⁷

¹⁶ Att’y Gen. of California, Massachusetts, New York, et al., Comment Letter on the Proposed Reconsideration of 2009 Endangerment Finding (Sept. 22, 2025) (EPA-HQ-OAR-2025-0194-13587) [hereinafter “Endangerment Comment”]; Att’y Gen. of New York, et al., Comment Letter on A Critical Review of Impacts of GHG Emissions on the U.S. Climate (Sept. 2, 2025) (DOE-HQ-2025-0207) [hereinafter “Climate Science Comment”], <https://www.mass.gov/doc/cwg-comment-letter/download>; Att’y Gen. of California, et. al., Comment Letter on the Proposed Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards: Vehicles Comment (Sept. 22, 2025) (EPA-HQ-OAR-2025-0194-2974) [hereinafter “Vehicles Comment”]; Att’y Gen. of New York, et al., Comment Letter on Proposed Repeal of Greenhouse Gas Emission Standards for Fossil Fuel-Fired Electric Generating Units (Aug. 7, 2025) (EPA-HQ-OAR-2025-0124-2389) [hereinafter “Power Plants Comment”]. These comments are incorporated by reference, in their entirety, into this comment.

¹⁷ RTC Vol. 9, at 11-12.

C. Wider Federal Uses for the GHGRP Data

EPA also uses the data to help prepare EPA’s annual *U.S. Inventory of Greenhouse Gas Emissions and Sinks* report.¹⁸ The report is submitted to the United Nations (UN) as required under the UN Framework Convention on Climate Change (UNFCCC),¹⁹ which the United States signed and the Senate ratified in 1992.²⁰ EPA produced its latest annual *U.S. Inventory of Greenhouse Gas Emissions and Sinks* update earlier this year in 2025, but failed to publish it until a Freedom of Information Act request forced its release.²¹ This report provides the most authoritative and comprehensive information on GHG emissions across the United States and is widely referenced by numerous federal agencies and Congress in the development of federal policies related to GHGs and climate change. For example, the Congressional Research Service prepares reports on GHG trends using EPA’s GHG Inventory Data.²² The data is also used by the Congressional Budget Office to analyze emissions, particularly in the manufacturing sector, and in conjunction with data from the United States Energy Information Administration (EIA) and other agencies.²³ Until recently, the Council on Environmental Quality (CEQ) issued guidance for federal agencies on considering GHG emissions under the National Environmental Policy Act (NEPA), which is informed by EPA’s data and methodologies.²⁴ And the Treasury Department and Internal Revenue Service (IRS) use the annual data to produce regulations governing tax credits for carbon sequestration and clean hydrogen production.²⁵

The Department of Energy has used inputs from the GHGRP to develop a set of Greenhouse gases, Regulated emissions, and Energy use in Technologies (GREET) Models.²⁶ GREET is a suite of models developed by Argonne National Laboratory for use in conducting lifecycle assessments for technologies, fuels, products, and energy systems. There are a total of six GREET models, each developed for specific use cases and regularly updated. Among these is the

¹⁸ *GHGRP and the U.S. Inventory of Greenhouse Gas Emissions and Sinks*, U.S. ENV’T PROT. AGENCY: GREENHOUSE GAS REPORTING PROGRAM (GHGRP), <https://www.epa.gov/ghgreporting/ghgrp-and-us-inventory-greenhouse-gas-emissions-and-sinks> [<https://perma.cc/SK3N-4AAU>] (last updated Oct. 3, 2025).

¹⁹ GHGRP CRS Report, *supra* n.5, at 1; UN Reporting Requirements, *supra* n.5.

²⁰ U.S. Congress, *Treaty Document 102-38: United Nations Framework Convention on Climate Change*, <https://www.congress.gov/treaty-document/102nd-congress/38#:~:text=Formal%20Title,Janeiro%20on%20June%2012%2C%201992>.

²¹ Jean Chemnick, *Enviros Release Climate Emissions Data after EPA Refused*, E&E NEWS: GREENWIRE (May 9, 2025), <https://subscriber.politicopro.com/article/eenews/2025/05/09/enviros-release-climate-emissions-data-after-epa-refused-00338529>.

²² JONATHAN L. RAMSEUR, CONG. RSCH. SERV., R47385, U.S. GREENHOUSE GAS EMISSIONS TRENDS AND PROJECTIONS FROM THE INFLATION REDUCTION ACT (Jan. 12, 2023), <https://www.congress.gov/crs-product/R47385>.

²³ *Emissions of Greenhouse Gases in the Manufacturing Sector*, CONGRESSIONAL BUDGET OFFICE (Feb. 2024), <https://www.cbo.gov/publication/60030>.

²⁴ National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1,196 (Jan. 9, 2023).

²⁵ Credit for Production of Clean Hydrogen and Energy Credit, 90 Fed. Reg. 2,224 (Jan. 10, 2025); ANGELA C. JONES, DONALD J. MARPLES, CONG. RSCH. SERV., IF11455, “THE SECTION 45Q TAX CREDIT FOR CARBON SEQUESTRATION” (Aug. 25, 2023) [hereinafter “Section 45Q Tax Credit CRS Report”], https://www.congress.gov/crs_external_products/IF/PDF/IF11455/IF11455.4.pdf.

²⁶ For example, certain inputs within the 45VH2-GREET model require alignment with data reported through the GHGRP.

45VH2-GREET, which “has been adopted by the U.S. Department of the Treasury to determine emissions rates for purposes of the Clean Hydrogen Production Tax Credit under Title 26 of the U.S. Code, Section 45V.”²⁷ Similarly, the 45ZCF-GREET model, which has been adopted by the U.S. Department of the Treasury to calculate emissions reduction percentages under the Clean Fuel Production Credit, uses data reported through the GHGRP to determine lifecycle emissions of different fuel production pathways.²⁸ States, including Washington and Oregon, also use GREET models in design of Clean Fuel Standards programs and the tools to support such programs.²⁹

Federal agencies use the GHGRP data directly for reporting and analysis—including facility reports and national inventories—to inform their own analyses, reports, and policy recommendations. Agencies also use EPA data and tools like the GHGRP to help them understand and address emissions, and to provide guidance to other stakeholders. Also, federal agencies often use EPA data as a primary source and cross-reference it with their own datasets and other agency data for a comprehensive view of energy and environmental trends, thus relying on the EPA data to confirm and contextualize data they collect.

D. State and Local Governments’ Use of the GHGRP

Many states and local governments use the GHGRP as a foundational building block for their own policy development as well as for regulation and tracking of greenhouse gases under their own programs. As detailed below, states and local governments also use the GHGRP as a source of GHG emissions calculation methods as well as for the Program’s electronic reporting infrastructure and for their GHG inventories.

1. Many state GHG reporting programs use the methodologies set forth in the GHGRP for calculating emissions

The technically rigorous and standardized methodologies developed in the GHGRP have been adopted by numerous states for their own GHG reporting programs. Many state GHG reporting programs adopt EPA’s methods by reference in their regulations for some, or all, of their reporting categories. For example, EPA’s methods are incorporated by reference in whole or in

²⁷ The January 2025 final rule for 45V tax credits explicitly mentions the incorporation of new GHGRP regulations into the 45VH-GREET model after RY2025, and the reliance upon GHGRP data for additional calculations within the model. 90 Fed. Reg. 2,224 (Jan. 10, 2025) (45VH-GREET discussed extensively throughout).

²⁸ I.R.S., Section 45Z Clean Fuel Production Credit; Emission Rates; Notice of Intent to Propose Regulations, Requests for Comments, Notice 2025-11 (2025), <https://www.irs.gov/pub/irs-drop/n-25-11.pdf>. See <https://www.irs.gov/credits-deductions/clean-fuel-production-credit>.

²⁹ WASH. ADMIN. CODE. § 173-424-110(157) (2025); OR. ADMIN. R. 340-253-0040(107) (2025). See *Clean Fuel Standard*, STATE OF WASHINGTON DEP’T ECOLOGY, <https://ecology.wa.gov/air-climate/reducing-greenhouse-gas-emissions/clean-fuel-standard> [<https://perma.cc/Z48P-XUTM>] (last updated November 2, 2025).

part for state-level GHG reporting programs in Colorado,³⁰ Massachusetts,³¹ Hawai‘i,³² Oregon³³ and Washington.³⁴ New York has also recently proposed a state-level GHG reporting program, which would incorporate by reference the reporting methods in EPA’s GHGRP.³⁵ Other states, such as Minnesota, use emissions factors from the EPA mandatory reporting rule and methods from the GHGRP in their GHG reporting programs, though not explicitly incorporated by reference in statute.³⁶ GHGRP methods are also used by states in air quality permits. For example, Oregon Department of Environmental Quality permits establish greenhouse gas plant site emission limits, and methods to determine compliance with those limits, based on Part 98 reporting protocols. Also, Oregon’s Landfill Gas Emissions rules, Oregon Administrative Rule Chapter 340, Division 239, use GHGRP methods to calculate methane emissions from landfills. For example, methane calculations from 40 C.F.R. Part 98, Subpart HH are used to evaluate whether areas of a landfill may be excluded from landfill gas control.³⁷

2. Many state and local GHG reporting programs use the GHGRP’s e-GGRT reporting tool to facilitate and streamline data collection

In addition to relying on the calculation methodologies developed in the GHGRP, many states use EPA’s electronic greenhouse gas reporting tool (e-GGRT) for their electronic reporting infrastructure and process. This operates to minimize costs and streamline reporting for industry and business reporters and other reporting entities. For example, Colorado allows entities reporting GHG emissions in their state-level reporting program to use e-GGRT to produce their reports and generate their Input Verifier Tool (IVT) input files if needed, and then export an XML file for reporting to the State of Colorado.³⁸ Similarly in Washington State, facility emissions reporters are directed to enter their emissions in e-GGRT, export an XML report and any IVT files, and submit to Washington along with a supplemental excel reporting tool provided by the State to report additional information required by Washington’s regulations.³⁹

³⁰ Colorado Air Quality Control Commission Regulation Number 22, 5 COLO. CODE. REGS. § 1001-26 (2020), incorporates by reference 40 C.F.R. Part 98 (effective January 1, 2025). Colorado Air Quality Control Commission Regulation Numbers 3 and 7 also rely on the GHGRP. *See, e.g.*, 5 COLO. CODE. REGS. § 1001-5:A.I.B.13, I.B.52, II.A.2 (2024); 5 COLO. CODE. REGS. § 1001-9:B.V (2025).

³¹ 310 MASS. CODE REGS. § 7.71 (2024).

³² HAW. CODE R. § 11-60.1-115(b) (2024).

³³ OR. ADMIN. R. 340-215-0010(3) (2020); OR. ADMIN. R. 340-239-0700 and -0800 (2022).

³⁴ WASH. ADMIN. CODE § 173-441-050(2) (2025); 173-441-120 (2022).

³⁵ 6 NYCRR Part 253 – *Mandatory Greenhouse Gas Reporting*, N.Y. STATE DEPT. CONSERVATION: RECENTLY PROPOSED AND ADOPTED REGULATIONS AND POLICIES, <https://dec.ny.gov/regulatory/regulations/proposed-emergency-recently-adopted-regulations/air-pollution-regulatory-revisions> (last visited Oct. 21, 2025).

³⁶ MINN. STAT. § 216H.01-.13; *Air emission reporting and fees*, MINNESOTA POLLUTION CONTROL AGENCY, <https://www.pca.state.mn.us/business-with-us/air-emission-reporting-and-fees> (last visited Oct. 28, 2025).

³⁷ OR. ADMIN. R. 340-239-0700 and -0800.

³⁸ *Greenhouse Gas Reporting*, COLO. DEPT. PUB. HEALTH & ENV’T, <https://cdphe.colorado.gov/climate-change/greenhouse-gas-reporting> (last visited Oct. 21, 2025).

³⁹ *Mandatory Greenhouse Gas Reports*, WASH. DEP’T ECOLOGY, <https://ecology.wa.gov/air-climate/reducing-greenhouse-gas-emissions/tracking-greenhouse-gases/mandatory-greenhouse-gas-reports> (last visited Oct. 21, 2025).

Reporters already subject to EPA’s GHGRP can thus simply build on their existing federal report to report their emissions to these state-level programs, saving them significant time and expense. And reporters that are not required to report federally, but are required to report in a state-level program, can still use the e-GGRT system to generate their reporting documentation for these state programs. Given that there are 47 categories of reporters, each with different GHG emissions calculation methodologies, the use of e-GGRT provides an essential service for reporters to organize and streamline their entry of these complex emissions reports, on which states have relied for their state-level reporting programs as well.

3. State and local governments use the data collected by the GHGRP for their GHG Inventories and policy development, and to assess achievement of key policy goals

To help states produce accurate and comparable greenhouse gas inventories, EPA releases the State Inventory Tool (SIT) every year. The SIT is an interactive, Excel-based tool to estimate state-wide GHG emissions by sector that aligns with IPCC guidelines.⁴⁰ The SIT incorporates activity and emissions data from several complex datasets, including federally reported data from the GHGRP, other federally reported data (e.g., energy and fuel consumption data collected and released by the EIA,⁴¹ and federal modeled data, e.g., EPA Motor Vehicle Emission Simulator (MOVES)⁴²), proprietary datasets that are not publicly available, and current research.

More than half of the states utilize the SIT to produce part, if not all, of their annual greenhouse gas emissions inventories, which provide a foundation for state and local governments to understand the scope and trends of GHG emissions in their jurisdictions and to design emission reduction policies under state law. According to the EPA’s Greenhouse Gas Inventories Searchable Table, at least 33 states use the SIT.⁴³ For example, the State of Washington uses the SIT to ensure that emissions are calculated accurately, that results are as comparable as possible to other states that use the SIT, and that Washington’s historic emissions data are comparable to its recent emissions data. Washington has used the SIT or its predecessor, the EPA State Greenhouse Gas Inventory Tool or “SGIT,” to estimate GHG emissions since its establishment of the 1990 baseline emission in 2007 (Ecology publication 07-02-021).⁴⁴ Washington currently relies on the SIT for most of its inventory, as augmented by three in-state datasets. Many other

⁴⁰ *State Inventory and Projection Tool*, U.S. ENV’T PROT. AGENCY: ENERGY RESOURCES FOR STATE AND LOCAL GOVERNMENTS (Feb. 25, 2025), <https://www.epa.gov/statelocalenergy/state-inventory-and-projection-tool> [<https://perma.cc/MS7V-DVEH>].

⁴¹ *About SEDS*, U.S. ENERGY INFO. ADMIN., <https://www.eia.gov/state/seds> (last visited Oct. 31, 2025).

⁴² *MOVES and Mobile Source Emissions Research*, U.S. ENV’T PROT. AGENCY (Sept. 18, 2025), <https://www.epa.gov/moves> [<https://perma.cc/FR56-26Z4>] (last visited Oct. 31, 2025).

⁴³ *GHG Inventories Searchable Table*, U.S. ENV’T PROT. AGENCY: INFLATION REDUCTION ACT (Jan. 22, 2025), <https://www.epa.gov/inflation-reduction-act/ghg-inventories-searchable-table> [<https://perma.cc/UWP5-4K6V>] (last visited Oct. 21, 2025).

⁴⁴ *Washington State: 1990 Greenhouse Gas Emissions Inventory* WASH. DEP’T ECOLOGY & DEP’T CMTY., TRADE, AND ECON. DEV. (2007), <https://apps.ecology.wa.gov/publications/documents/0702021.pdf> [hereinafter “1990 Baseline Report”].

states and cities use a similar process to develop their state or local GHG inventory, including Colorado, Delaware, Hawai‘i, New York, and Rhode Island.

Critically, many states rely on their annual greenhouse gas inventories (built in large part on GHGRP data) to assess progress in achieving statutory goals to reduce GHG emissions in their jurisdiction. States with statutory GHG reduction requirements include Colorado,⁴⁵ Maine,⁴⁶ Maryland,⁴⁷ Massachusetts,⁴⁸ Minnesota,⁴⁹ New Jersey,⁵⁰ New York,⁵¹ Rhode Island,⁵² Vermont,⁵³ and Washington.⁵⁴

In addition to the SIT, the EPA’s GHGRP also publishes annual facility-level emissions data from large-emitting facilities throughout the U.S.⁵⁵ This data is currently available for each state through calendar year 2023. Users can access the GHGRP data through the EPA Facility Level Information on Greenhouse gases Tool (FLIGHT)⁵⁶ and other EPA platforms.⁵⁷ The FLIGHT tool includes an “interactive website with mapping features to identify GHGRP facilities by location, name, industry type, and other criteria.”⁵⁸ State governments routinely access FLIGHT data collected under the GHGRP to develop and refine their statewide GHG inventories, perform quality control on state-level emissions reports, and to assess usefulness and potential gaps in the methodologies being leveraged and the data being collected.

Further, EPA’s *U.S. Inventory of Greenhouse Gas Emissions and Sinks*,⁵⁹ built from data in the GHGRP, particularly for facilities and fuel suppliers, provides a key reference that many state and local governments rely on to provide context to the data in their own emissions reporting programs. This allows many state and local governments to understand how emissions in their jurisdiction compare to total U.S. emissions, to other states or local jurisdictions, and to compare across sectors, subsectors, and time. This helps jurisdictions understand how their own GHG emissions fit into the larger national emissions profile and how that is changing over time and in comparison to national trends.

⁴⁵ COLO. REV. STAT. §§ 25-7-102(2)(g)(I), -105(1)(e).

⁴⁶ ME. REV. STAT. § 38562.2.

⁴⁷ MD. CODE. ANN., ENV’T §§ 2-1204, 2-1204.1.

⁴⁸ MASS. GEN. LAWS ANN. Ch. 21N, § 3.

⁴⁹ MINN. STAT. § 216H.01-.13; MINN. STAT. § 216B.1691.

⁵⁰ N.J. STAT. ANN. § 26:2C-39; *see* N.J. STAT. ANN. § 26:2C-43.

⁵¹ N.Y. ENV’T CONSERV. Law § 75-0107.

⁵² R.I. GEN. LAWS § 42-6.2-9.

⁵³ VT. STAT. ANN. tit. 10, § 578.

⁵⁴ WASH. REV. CODE § 70A.45.020.

⁵⁵ *Greenhouse Gas Reporting Program (GHGRP)*, U.S. ENV’T PROT. AGENCY (Oct. 8, 2025), <https://www.epa.gov/ghgreporting> [<https://perma.cc/HB9W-4YME>] (last visited Oct. 21, 2025).

⁵⁶ *Facility Level Information on Greenhouse Gases Tool (FLIGHT)*, U.S. ENV’T PROT. AGENCY, <https://ghgdata.epa.gov/ghgp/main.do> (last visited Oct. 21, 2025).

⁵⁷ *Find and Use GHGRP Data*, U.S. ENV’T PROT. AGENCY: GREENHOUSE GAS REPORTING PROGRAM (GHGRP) (Aug. 6, 2025), <https://www.epa.gov/ghgreporting/find-and-use-ghgrp-data> [<https://perma.cc/UZ6M-EBKB>].

⁵⁸ *Id.*

⁵⁹ *GHGRP and the U.S. Inventory of Greenhouse Gas Emissions and Sinks*, *supra* n.18.

E. Companies, Researchers, and the Public Also Rely on GHGRP Data

Many companies rely on the data from the GHGRP and use it in their annual sustainability reports. Companies also use the data to demonstrate environmental progress to shareholders and to meet international reporting requirements.⁶⁰ Businesses also use emissions and supply chain data in risk mitigation for operations and supply chains. Losing data or having inconsistent data results in greater uncertainty for businesses around operational and supply chain decisions and increases the risk of disruption. Business-specific risk and climate risk, as well as uncertainty in the data, could increase insurance rates as insurers hedge against losses. When losses happen, they may trigger lost sales and/or increased costs related to alternative sourcing.

Emissions data and their importance to assessing climate risks also play a role in the housing market: Insurance availability and rates, as well as how those translate into buyer willingness to pay.⁶¹ Large platforms like Redfin incorporate risk modeling data from firms like First Street to score properties on flood, fire, air quality, and heat. These risks affect prospective insurance costs and also factor into buyers' assessment of possible quality of life disruptions, health, and property uses. The loss of GHGRP emissions data may affect the quality of these forecasts and, in turn, reduce buyer willingness to pay or shift the geographies in which they purchase as they hedge against these potential losses.

Businesses may also use emissions data to attract investors. For example, in 2021 researchers found that investors penalize companies for high levels of emissions.⁶² To the extent that investors perceive data gaps, see emissions data as uncertain or unreliable, or factor in the production risk and insurance factors discussed above, they may hedge against losses similarly to insurers or buyers by reducing investment in firms otherwise perceived as higher risk. Emissions data is thus necessary for investors to make accurate and efficient market decisions.

Businesses across the U.S. also rely on the GHGRP to maximize their opportunities to claim domestic tax credits like those for clean hydrogen (45V)⁶³ and carbon capture (45Q).⁶⁴ Businesses have pointed to the GHGRP as the “regulatory backbone ensuring the integrity,

⁶⁰ Sharon Lerner, *EPA Plans to End Greenhouse Gas Reporting for Most Polluters*, PROPUBLICA (April 10, 2025), <https://www.propublica.org/article/trump-epa-greenhouse-gas-reporting-climate-crisis#:~:text=In%20contrast%2C%20climate%20experts%20say,developing%20countries%2C%E2%80%9D%20Lighthouse%20said.>

⁶¹ Benjamin J. Keys, *Housing, Climate Risk, and Insurance*, NAT'L BUREAU ECON. RSCH.: THE REPORTER (June 16, 2025), <https://www.nber.org/reporter/2025number2/housing-climate-risk-and-insurance?page=1&perPage=50>.

⁶² Houdou Basse Mama & Rahel Mandaroux, *Do Investors Care about Carbon Emissions under the European Environmental Policy?*, 31 BUS. STRATEGY AND ENV'T 2022:31:268, 277 (Sept. 1, 2021), <https://onlinelibrary.wiley.com/doi/10.1002/bse.2886>.

⁶³ Credit for Production of Clean Hydrogen and Energy Credit, 90 Fed. Reg. 2,224 (Jan. 10, 2025).

⁶⁴ Section 45Q Tax Credit CRS Report, *supra* n.25.

transparency, and accountability”⁶⁵ of such credits, citing the program’s robust reporting mechanisms as key to the long-term success of industries like carbon management.⁶⁶

Businesses may also rely on the GHGRP’s reputability to demonstrate compliance with international export laws like the European Union’s Methane Regulation⁶⁷ and Carbon Border Adjustment Mechanism (CBAM),⁶⁸ making this data an important tool facilitating the competitiveness of American firms in these markets. For example, in 2020, the French trading firm Engie suspended a \$7 billion contract to buy LNG from the Brownsville, Texas export facility over concerns about the high methane emissions from shale gas.⁶⁹ Engie later signed a 15-year purchase agreement to buy certified LNG from Rio Grande LNG that has lower fugitive emissions, but that agreement is contingent on credible emissions data like the GHGRP.⁷⁰ For this reason, the oil and gas sector, in particular has strong reliance interests in the GHGRP.⁷¹

Finally, non-governmental institutions, researchers, and the public all rely on the GHGRP as a reliable source of data and information to assess GHG emissions trends and context.

ARGUMENT

I. SECTION 114 CLEARLY AUTHORIZES EPA TO COLLECT DATA UNDER THE GHGRP, AND EPA’S PROPOSAL TO CONCLUDE OTHERWISE IS UNLAWFUL

In EPA’s own words, the best reading of section 114(a) is that it grants EPA “broad authority” to collect information to carry out the purposes of the Clean Air Act. 74 Fed. Reg. at 56,264; *see* RTC Vol. 9, at 7. EPA has affirmed its interpretation again and again, and in various contexts, since 2009. *See e.g.*, 84 Fed. Reg. 25,392, 25,393 (May 1, 2013) (stating “[Clean Air Act] section 114 provides the EPA broad authority”); 80 Fed. Reg. 64,262, 64,265 (Oct. 22, 2015) (stating “[Clean Air Act] section 114(a)(1) provides the EPA broad authority to require the information to be gathered”); 81 Fed. Reg. 86,490, 86,493 (Nov. 30, 2016) (same); 87 Fed. Reg. 75,334, 75,368

⁶⁵ EPA’s Greenhouse Gas Reporting Program is the Foundation for Long-Term Success of Carbon Storage, CARBON CAPTURE COALITION (June 27, 2025) <https://carboncapturecoalition.org/epas-greenhouse-gas-reporting-program-is-the-foundation-for-long-term-success-of-carbon-storage/>.

⁶⁶ EPA Proposes Damaging Repeal of the Greenhouse Gas Reporting Program, which Underpins Public Confidence in the 45Q Tax Credit, CARBON CAPTURE COALITION (Sept. 12, 2025), <https://carboncapturecoalition.org/epa-proposes-damaging-repeal-of-the-greenhouse-gas-reporting-program-which-underpins-public-confidence-in-the-45q-tax-credit/>.

⁶⁷ Commission Regulation 2024/1787 of June 13, 2024, On the Reduction of Methane Emissions in the Energy Sector and Amending Regulation (EU) 2019/942, 2024 O.J. (L 1787), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL_202401787.

⁶⁸ Commission Regulation 2023/956 of June 6, 2024, Establishing a Carbon Border Adjustment Mechanism 2023 O.J. (L 130), <https://eur-lex.europa.eu/eli/reg/2023/956/oj/eng>.

⁶⁹ Sarah White & Scott DiSavino, *France Halts Engie’s U.S. LNG Deal Amid Trade, Environment Disputes*, REUTERS (Oct. 22, 2020), <https://www.reuters.com/business/france-halts-engies-us-lng-deal-amid-trade-environment-disputes-2020-10-22/>.

⁷⁰ Kelsey Hallahan and Emmanuel Corral, *Right time, right place for Haynesville Shale to meet global call for cleaner natural gas*, S&P GLOBAL (May 9, 2022), <https://www.spglobal.com/commodity-insights/en/news-research/latest-news/natural-gas/050922-right-time-right-place-for-haynesville-shale-to-meet-global-call-for-cleaner-natural-gas>.

⁷¹ Cahill, *supra* n.2.

(Dec. 8, 2022) (“It is common for the EPA to require both recordkeeping and reporting in [Clean Air Act] regulations, using the broad authority of section 114, sufficient for practical enforceability of the requirements and so that the public has transparent access to records demonstrating compliance.”).

EPA now proposes to conclude that it lacks authority to collect GHGRP data under section 114(a)(1) of the Clean Air Act, “because the reporting requirements do not serve an underlying statutory basis” and—for sectors subject to section 136—“reporting is not required . . . until [reporting year] 2034.” 90 Fed. Reg. at 44,596. It proposes that section 114(a)(1) “is best read to require a closer nexus between continuous reporting obligations and an underlying statutory purpose.” *Id.* Yet, EPA’s claim that it lacks statutory authority to maintain the GHGRP is contrary to the text of and legislative intent behind section 114. And no such ‘close nexus’ requirement exists in the text of section 114; rather, such a reading of section 114 subverts the plain text of the statute. Moreover, EPA is wrong that the reporting requirements do not serve an underlying statutory purpose; indeed, they serve a great number of critical statutory purposes related to the most urgent environmental problem of our time. Finally, reporting is not prohibited prior to reporting year 2034 under section 136.

A. The best—and only permissible—reading of section 114 affords EPA broad authority to collect GHG emissions data

Section 114(a)(1) states that EPA “may require *any person* who owns or operates *any emission source*, who manufactures emission control equipment or process equipment, who the Administrator believes may have information necessary for the purposes set forth in this subsection, or who is subject to any requirement of this chapter” to make records and establish and maintain records “on a one-time, periodic, or continuous basis.” 42 U.S.C. § 74114(a)(1) (emphasis added). The Administrator may require such reporting and recordkeeping for the purposes of: (i) “developing or assisting in the development of *any implementation plan* under section 7410 or section 7411(d) of this title, *any standard of performance* under section 7411 of this title, *any emission standard* under section 7412 of this title, or *any regulation* under section 7429 of this title;” (ii) “determining whether *any person* is in violation of *any such standard or requirement* of such plan;” or (iii) “carrying out *any provision* of this chapter (except a provision under subchapter II with respect to a manufacturer of new motor vehicles or new motor vehicle engines).” 42 U.S.C. § 7414(a) (emphasis added).

The circumstances for which EPA may require reporting are thus comprehensive: EPA may collect information from “*any person* . . . who the Administrator believes may have information necessary” to “carr[y] out *any provision* of this chapter” “on a one-time, periodic or continuous basis”—i.e. whenever. 42 U.S.C. § 7414(a)(1) (emphasis added); *see* RTC Vol. 9, at 8 (“Section 114 clearly authorizes the collection of information for purposes of carrying out any provision(s) of the Clean Air Act.”). Congress’s repeated use of “any” reflects its express intent to *not* limit EPA’s authority, but rather to enable the agency to collect information from anyone and at any time in order to achieve the purposes of the Clean Air Act. *Ali v. Federal Bureau of Prisons*, 552 U.S. 214, 219-20 (2008) (“[R]ead naturally, the word ‘any’ has an expansive meaning . . .”);

accord RTC Vol. 9 at 13 (“Congress’ use of ‘any’ indicates that it did not intend to limit EPA’s authority to only certain kinds of provisions or only regulated air pollutants.”). Congress could not have been more clear in conferring “broad authority” upon EPA. 74 Fed. Reg. at 56,264. EPA has explained that, “[g]iven the breadth of authority granted to EPA in the [Clean Air Act], it is not surprising that, rather than listing each and every possible use of information, Congress relied on a catch-all phrase such as “carrying out any provision” of the Act.” RTC Vol. 9 at 13 (emphasis in original). The plain language of this statutory text conveys breadth and demonstrates clear congressional intent to give EPA wide latitude to collect information relevant to carrying out the Clean Air Act. *See supra*, Background Section I.B (explaining Congress repeatedly expanded EPA’s authority to collect data under section 114).

Nothing in this extensive grant of authority even suggests that there must be a “close[] nexus” between an underlying statutory purpose and continuous (or one time or periodic) reporting, as EPA suddenly contends. 90 Fed. Reg. at 44,596. Such an interpretation of section 114 unnaturally narrows an otherwise expansive grant of authority—contrary to the plain text and congressional intent—by adding words that Congress did not include in section 114. It is a foundational canon of statutory interpretation that neither courts nor agencies may read additional words into statutes; yet, that is exactly what EPA attempts to do here. *See Biden v. Texas*, 597 U.S. 785, 803 (2022) (“We do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply.”) (quoting *Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335, 341 (2005)). The statute simply does not set a “close[] nexus” limitation for the collection of continuous—or one-time or periodic—data.

Indeed, as EPA has previously explained, adding a “close[] nexus” requirement “would prevent EPA from gathering information that could be critical to key decisions until after those decisions are made.” 74 Fed. Reg. at 56,287. EPA’s proposed interpretation would yield the absurd result in which its statutory authority to collect GHG emissions data would depend on the agency already having decided to regulate a particular source category, when a key purpose of section 114(a)(1) is to provide that data to inform such a decision in the first place. As EPA has explained, “[t]he point of gathering information is to inform decisions regarding the legal, technical and policy viability of various options. To require a narrowing of these options beforehand would be putting the decisional cart before the informational horse.” RTC Vol. 9 at 14. EPA’s presently stated intent to not use the GHGRP data to enforce or develop regulations under the Clean Air Act is thus irrelevant to the agency’s underlying statutory authority to maintain the program. EPA’s “close[] nexus” interpretation is not a permissible reading of the Clean Air Act. And, *arguendo*, even if it were, any close nexus requirement would be met for the same reasons just stated. As discussed *infra*, the data collected through the GHGRP is critical to multiple purposes of, and programs under, the Clean Air Act.

Furthermore, Congress has ratified EPA’s broad authority to maintain the GHGRP. The Supreme Court has explained that Congress can confirm executive authority through appropriation if “the appropriation . . . plainly show[s] a purpose to bestow the precise authority which is claimed.” *Ex parte Endo*, 323 U.S. 283, 303 n.24 (1944). That is exactly what Congress did here. Congress repeatedly ratified EPA’s expansive authority to collect information under the Clean Air Act.

First, in the Consolidated Appropriations Act of 2008, Congress provided EPA \$3,500,000 to develop and publish a final rule “to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in *all* sectors of the economy,” Pub. L. 110-161, 121 Stat. 1844, 2128 (2008) (emphasis added). Second, in the joint explanatory statement accompanying the Consolidated Appropriations Act of 2008, Congress directed EPA to “use its existing authority under the Clean Air Act” to develop the required GHG reporting rule and include reporting of emissions from both upstream production and downstream sources to the extent appropriate. 153 Cong. Rec. H16131 (Dec. 17, 2007). And third, in the Omnibus Appropriations Act of 2009, Congress provided EPA \$6,500,000 in additional funding to develop, publish, and begin implementation of a mandatory GHG reporting rule, Pub. L. 111-8, 123 Stat. 524, 729 (2009). Congress explicitly concluded that the Clean Air Act grants EPA authority to require greenhouse gas reporting from all sectors. And, *arguendo*, assuming that EPA did not already possess that authority, the only way to give effect to the 2008 and 2009 Consolidated Appropriations Acts would be to interpret Congress to have given EPA that authority in the 2008 and 2009 appropriation acts.

And Congress did not stop there. In the Inflation Reduction Act, Congress directly relied upon the GHGRP—and its continued existence—in promulgating Clean Air Act section 136, the methane emissions and waste reduction incentive program, discussed *infra*, Argument Section I.C. That statutory provision specifically cross-references 40 C.F.R. subpart W—which contains the GHGRP regulations—five times. *See* 42 U.S.C. § 7436(a)(1), (c), (d), (e), (h). And it depends upon those regulations to determine the facilities subject to the program, the amount of the charge those facilities must pay, and eligibility for EPA grant funds. Through that legislation, and as discussed *infra*, Argument Section III.B.2, Congress further directed EPA to revise its GHGRP regulations. The Inflation Reduction Act thus constitutes additional statutory ratification of the GHGRP.

Notably, EPA’s new statutory interpretation is also not afforded any deference. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). Even *Skidmore* deference is unwarranted for EPA’s new and unexplained statutory interpretation, which is at odds with EPA’s longstanding approach, inconsistent with Congressional direction, and not grounded in persuasive reasoning. And, *arguendo*, even if there were a “closer nexus” requirement, the GHGRP data would easily meet it, since the GHGRP data supports a plethora of statutory purposes. *See infra*, Argument Section I.B.1 and 2, and III.A.1.

EPA does not meaningfully grapple with the statutory text, congressional intent, or its own prior interpretation—which it affirmed again and again over 16 years—in the Proposal. Rather, it conclusively states that its new interpretation “is most consistent with the text of the statute and supported by the Agency’s experience with the GHGRP since 2011.” 90 Fed. Reg. at 44,597. EPA does not attempt to ground its new statutory interpretation in the text of the statute or explain how its experience supports its change in position—likely because it cannot, given that EPA’s new proposed ‘best reading’ of section 114 is contrary to its plain language and clear congressional intent to confer a comprehensive authority upon EPA. Yet, the best reading of a statute must be tied to the text of the statute itself, rather than to the outcome the agency desires.

Loper Bright Enterprises v. Raimondo, 603 U.S. 369, 403-04 (2024) (“Courts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences.”); *see id.* at 393 (“The text of the [statute] means what it says. And a look at its legislative history if anything only underscores that plain meaning.”); *see infra*, Argument Section III.E (explaining that EPA has prejudged the outcome of the Proposal and its rationales are pretextual).

Thus, as explained above, the best reading of section 114 is that it confers “broad authority” to EPA to maintain the GHGRP. EPA’s thinly veiled attempt to undermine its own authority under the Clean Air Act lacks foundation in law.

B. EPA is wrong that “the reporting requirements do not serve an underlying statutory purpose”

1. EPA’s collection of GHG emissions information from U.S. sources is central to its mandatory statutory obligation to protect Americans from climate pollution that may endanger human health and welfare

Fundamentally, EPA appears to be proposing that it does not need information on greenhouse gas emission sources because it does not intend to fulfill its statutory obligation to address sources of greenhouse gas pollution, which EPA found 16 years ago and has affirmed numerous times since endanger human health and welfare. But this abdication of its obligations under the Clean Air Act is not a choice left to EPA under the statute.

Take, for example, section 111(b)(1)(A)-(B) (emphasis added):

The Administrator *shall* . . . publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He *shall* include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. . . . Within one year after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator *shall* publish proposed regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he *shall* promulgate, *within one year* after such publication, such standards with such modifications as he deems appropriate. The Administrator *shall*, at least every 8 years, review and, if appropriate, revise such standards following the procedure required by this subsection for promulgation of such standards.

As EPA is well aware, both climate change and ocean acidification are problems caused by increasing accumulation of GHGs in the atmosphere (and then the ocean). The danger that GHGs pose to public health and welfare cannot be fully addressed without regulating meaningful contributors of GHG emissions—and reducing emissions from any source of those emissions

reduces the endangerment caused by climate change. States and Local Governments recently filed comments on EPA’s proposals to rescind the 2009 Endangerment Finding for motor vehicle emissions, repeal all motor vehicle GHG emission standards, and repeal the Carbon Pollution Standards for electric generating units, as well on as a recent DOE report on which EPA’s misguided endangerment rescission heavily relies.⁷² Those comments, which are attached to this comment and incorporated in full, demonstrate the severe endangerment to public health and welfare caused and contributed to by emissions of GHGs from numerous sources. As the IPCC concluded, “[d]eep, rapid, and sustained reductions in greenhouse gas emissions” are necessary to address climate harms, and every increase in emissions makes the harm worse:

Every increment of global warming will intensify multiple and concurrent hazards . . . [C]ontinued emissions will further affect all major climate system components. With every additional increment of warming, changes in extremes continue to become larger. Continued global warming is projected to further intensify the global water cycle, including its variability, global monsoon precipitation, and very wet and very dry weather. . . . With further warming, every region is projected to increasingly experience concurrent and multiple changes in climatic impact-drivers. . . . High risks are now assessed to occur at lower global warming levels. . . . Some future changes are unavoidable and/or irreversible but can be limited by deep and sustained global greenhouse gas emissions reductions. The likelihood of abrupt and/or irreversible changes increases with higher global warming levels. Similarly, the probability of low-likelihood outcomes associated with potentially very large adverse impacts increases with higher global warming levels Cumulative carbon emissions until the time of reaching net zero CO₂ emissions and the level of greenhouse gas emission reductions this decade largely determine whether warming can be limited to 1.5°C or 2°C.⁷³

As illustrated in Figure 7 below, to meet its still-in-force Paris Agreement target of a 50–52% reduction in emissions by 2030, the United States must sustain a 7.6% annual reduction in emissions from 2025-2030.⁷⁴

⁷² Endangerment Comment, *supra* n.16; Climate Science Comment, *supra* n.16; Vehicles Comment, *supra* n.16; Power Plants Comment, *supra* n.16.

⁷³ Hoesung Lee, et al., *Climate Change 2023: Synthesis Report*, Intergovernmental Panel on Climate Change, at 12-13, 17-19 (2023), https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf.

⁷⁴ Michael Gaffney, Ben King, and John Larsen, *Preliminary US Greenhouse Gas Emissions Estimates for 2024*, RHODIUM GRP. (Jan. 9, 2025), <https://rhg.com/research/preliminary-us-greenhouse-gas-estimates-for-2024/> [<https://perma.cc/KJQ8-LB9X>].



Michael Gaffney et al., Rhodium Grp., Preliminary U.S.

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More fundamentally, greater accumulation of emissions in the atmosphere causes greater warming, greater damages, and greater risks of triggering tipping points in the climate system and catastrophic climate harms.⁷⁵ As the IPCC explained, “[r]eaching net zero CO₂ emissions globally is necessary for limiting global warming to any level.”⁷⁶ In other words, to stop the rise in global average temperatures, we must stop adding more greenhouse gases to the atmosphere than natural sinks can remove—which means we must control emissions from all contributing sectors.⁷⁷

⁷⁵ See *Effects of Human-Caused Greenhouse Gas Emissions on U.S. Climate, Health, and Welfare*, NAT’L ACADS. OF SCIS., ENG’G & MED., 2, 38-39 (Prepub. Copy) (2025), <https://www.nationalacademies.org/our-work/anthropogenic-greenhouse-gases-and-us-climate-evidence-and-impacts> [hereinafter “2025 NAS Report”]; *id.* at 2 (“Continued changes in the climate increase the likelihood of passing thresholds in Earth systems that could trigger tipping points or other high-impact climate surprises.”).

⁷⁶ Priyadarshi Shukla, et al., *Climate Change 2022: Mitigation of Climate Change. Working Group III Contribution of the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, 1, 325 (2022), https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FullReport.pdf.

⁷⁷ *Climate Change 2021 : Physical Science Basis, Summary for Policymakers*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, 19-20 (2021), https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf (“Under scenarios with increasing CO₂ emissions, the ocean and land carbon sinks are projected to be less effective at slowing the accumulation of CO₂ in the atmosphere. . . . This is projected to result in a higher proportion of emitted CO₂ remaining in the atmosphere (high confidence).”).

EPA concedes that data from the registry was used to inform the development of New Source Performance Standards and Emission Guidelines under section 111 for oil and natural gas facilities, fossil-fuel fired electric generating units, and municipal solid waste landfills—all of which remain binding on the regulated sources—but EPA states that the agency “has not implemented standards for most additional source categories” covered by the reporting program, and “is not planning to develop such regulations at this time.” 90 Fed. Reg. at 44,598. In the context of a pollution problem that requires attainment of net zero emissions to stop the rise in global average temperatures, the fact that EPA has not yet developed standards for sectors other than power plants, landfills, and oil and gas facilities (and, under other Clean Air Act sections, vehicles and aircraft) is solely an indication that EPA’s statutory obligations are not yet fulfilled, as to those other sectors, making the data provided by the GHGRP all the more critical. Whether the current EPA decides to uphold its statutory obligations is a different matter and does not obviate the need for the GHGRP.

Further, emissions from the power sector, oil and gas sector, and landfills continue to be a large segment of total U.S. greenhouse gas emissions,⁷⁸ even with the implementation of the existing standards—indicating that these standards will need to be tightened going forward. EPA would certainly need to understand emission trends in these sectors and their relationship to total U.S. emissions if it were to decide not to tighten standards for these sectors going forward. For example, EPA’s analysis of the Carbon Pollution Standards for the power sector projected emissions of 1,098 million metric tons of CO₂ in 2030; 724 million metric tons in 2035, and 459 million metric tons in 2040. Comparing those projections to *current* U.S. GHG emissions from different economic sectors (containing many source categories) shows the continuing outsized impact of the power sector. The comparison shows that the power sector in 2030 and 2035 would be the third largest source of U.S. greenhouse gas emissions by economic sector today and the power sector in 2040 would be the fifth largest source by economic sector today.⁷⁹ Independent analysis by the Rhodium Group arrives at a similar conclusion, showing that with the Carbon Pollution Standards in place and with the updated federal clean electricity tax credits expiration schedule, power sector GHG emissions would be 909 million metric tons in 2035 and 963 million metric tons in 2040 under the “mid” scenario.⁸⁰ Power sector emissions would continue to be a large portion of projected total U.S. GHG emissions, comprising 23% and 32% of total annual emissions in 2035 and 2040, respectively.⁸¹ Similarly, with the 2024 New Source Performance Standards and Emissions Guidelines for oil and gas operations in place, the

⁷⁸ *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2022*, EPA 430-R-24-004, 1, ES-4, ES-9, ES-11-13, ES-20, 3-74 to 3-121, 7-6 to 7-7 (2024) [hereinafter “GHG Inventory Report”], https://www.epa.gov/system/files/documents/2024-04/us-ghg-inventory-2024-main-text_04-18-2024.pdf [<https://perma.cc/RN84-CX7H>] (EPA-HQ-OAR-2025-0194-0010); see also *Inventory of U.S. Greenhouse Gas Emissions and Sinks*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks> [<https://perma.cc/G482-HXG9>] (last updated July 1, 2025).

⁷⁹ GHG Inventory Report, *supra* n. 78, at ES-21, Table ES-5 (showing transportation emissions of 1,801.5 million metric tons of CO₂-equivalent in 2022, industry emissions of 1,452.5 mmt, agriculture emissions of 634 mmt, and commercial emissions of 463.7 mmt).

⁸⁰ BEN KING ET AL., RHODIUM GRP., TAKING STOCK 2025 (Sept. 10, 2025), <https://rhg.com/research/taking-stock-2025/>.

⁸¹ *Id.*

Rhodium Group analysis finds that GHG emissions from the oil and gas sector would be 618 million metric tons in 2035 and 605 million metric tons in 2040 under the “mid” scenario.⁸² Oil and gas emissions would comprise 16% and 18% of total annual emissions in 2035 and 2040.⁸³ Comparing those projections to current U.S. GHG emissions from different economic sectors, the oil and gas sector would be the fifth largest source in 2040.⁸⁴

The GHGRP gives EPA the emissions information it needs to prioritize the development of GHG emission standards for different sectors based on the relative size of their emissions and how emissions from each sector are changing over time, informs analyses of whether a sector contributes or contributes significantly by allowing comparisons between different sectors, and supports the development of the standards themselves.⁸⁵ Indeed, not only has EPA consistently compared the emission contributions of different sectors as part of its assessment of contribution during the first Trump Administration, EPA also made trends in emissions over time a central part of its inquiry.⁸⁶ While the State and Local Governments vigorously disagree with this Administration’s proposal to repeal the Carbon Pollution Standards,⁸⁷ that proposal was centrally premised on the notion that U.S. power plants greenhouse gas emissions do not “contribute significantly” to endangerment, in part because the percentage of GHG emissions from U.S. power plants has declined from 5.5% in 2005 to 3% in 2022.⁸⁸ In so contending, EPA’s

⁸² *Id.*

⁸³ *Id.*

⁸⁴ GHG Inventory Report, *supra* n. 78, at 2-30, Table 2-10 (showing transportation emissions of 1801.5 million metric tons of CO₂-equivalent in 2022, electric power industry of 1577.5 mmt, industry emissions of 1452.5 mmt, agriculture of 634 mmt, commercial of 463.7 mmt, and residential of 391.3 mmt. The oil and gas sector is comprised of several source categories under the industrial sector.)

⁸⁵ *See, e.g.*, Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,510 (Oct. 23, 2015) (discussing the relative contribution of power plants to U.S. CO₂ emissions in the context of making a significant contribution finding); Pollutant-Specific Significant Contribution Finding for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, and Process for Determining Significance of Other New Source Performance Standards Source Categories, 86 Fed. Reg. 2,542, 2,555–56 (Jan. 13, 2021) (relying on the U.S. Greenhouse Gas Inventory to make a pollutant-specific significant contribution finding for U.S. power plants, explaining that “[a]lthough GHG emissions from EGUs have fallen since the EPA promulgated the 2015 Rule, they still remain uniquely large among stationary source categories”); Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 89 Fed. Reg. 39,798, 39,800, 39,812 (May 9, 2024) (similarly relying on GHG emissions data); Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare, 81 Fed. Reg. 54,422, 54,461, 54,473 (Aug. 15, 2016) (similarly relying on GHG emissions data); Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496, 66,499, 66,537, 66,540 (Dec. 15, 2009) (similarly relying on GHG emissions data); Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources, 81 Fed. Reg. 35,824, 35,838-39 (June 3, 2016) (similarly relying on GHG emissions data); Standards of Performance for Municipal Solid Waste Landfills, 81 Fed. Reg. 59,332, 59,336 (August 29, 2016) (similarly relying on GHG emissions data).

⁸⁶ 86 Fed. Reg. at 2,556 (“As mentioned earlier, an important criterion is the evaluation of the trends in emissions and number of designated facilities within a source category, such that the EPA can evaluate whether a source category is on a trajectory of U.S. GHG emission decline.”).

⁸⁷ *See* Power Plant Comments, *supra* n. 16.

⁸⁸ Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units, 90 Fed. Reg. 25,752, 25,767-68 (June 17, 2025).

“[c]alculations [were] based on” the EPA’s Greenhouse Gas Inventory, which, in turn, is dependent on the GHGRP.⁸⁹

None of these analyses can be completed without continuous greenhouse gas emissions reporting across meaningful sources. EPA’s political desire to avoid its statutory obligations—evident in its rush to unlawfully overturn existing GHG emission standards and the 2009 finding that GHG emissions endanger public health and welfare without a single remotely adequate record or justification⁹⁰—does not alter the fact that EPA is legally bound to fulfill those statutory obligations. As such, the need for the GHGRP remains unchanged. Further, EPA’s unlawful abandonment of its statutory obligations to establish and enforce GHG standards is not a valid basis for rescinding the GHGRP; to the contrary, this flawed justification renders the proposed rescission itself unlawful.⁹¹ Certainly EPA cannot evade the law by throwing away the source of data that makes clear how dangerous air pollution remains.

EPA asserts, without support, that the information collected under the reporting program “is also not necessary nor helpful to develop such regulations or to inform development of new source performance standards” because EPA has the authority to collect emission data from sources under Section 114 “on a more targeted and relevant basis.” 90 Fed. Reg. at 44,598. But EPA does not explain how the emission data it would collect for such rulemakings would be different from that provided under the reporting program, or how it would be “more relevant.” EPA also does not explain how it does not have the authority for the GHGRP but does have the authority under section 114 to collect emissions data from sources of greenhouse gas emissions. Nor does EPA explain how it can understand and prioritize regulation to address the most urgent environmental problem of our time without continuous data about the sources of the problem.

2. The data collected through the GHGRP serves multiple underlying statutory purposes

EPA blithely asserts that “the reporting requirements do not serve an underlying statutory purpose.” 90 Fed. Reg. at 44,596. Yet, nothing could be further from the truth. In addition to the discussion above—regarding EPA’s fundamental obligation under the Clean Air Act to protect Americans from the dangers posed by climate change—the data collected through the GHGRP serves a plethora of other statutory purposes.

In the very first section of the Clean Air Act, Congress finds that air pollution prevention is “the primary responsibility of States” and provides that “Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.” 42 U.S.C. § 7401(a). Section 101(b) likewise provides that a “purpose” of the Act is “to provide technical and financial assistance to the States in connection

⁸⁹ *Id.* at 25,768 n.120.

⁹⁰ Endangerment Comment, *supra* n. 16; Climate Science Comment, *supra* n. 16; Vehicles Comment, *supra* n. 16; Power Plants Comment, *supra* n. 16.

⁹¹ EPA “is not planning to develop [] regulations [for sectors not yet regulated for greenhouse gas emissions] at this time.” 90 Fed. Reg. at 44,598.

with the development and execution of their air pollution prevention and control programs” and “to encourage and assist the development and operation of regional air pollution prevention and control programs.” *Id.* § 7401(b). As explained *infra*, Argument Section III.B.1, many of our States rely significantly on the GHGRP data to develop and execute state and regional air pollution prevention programs. EPA itself has noted that “[s]tates, cities, and other communities can use EPA’s greenhouse gas data to find high-emitting facilities in their area, compare emissions between similar facilities, and develop common-sense climate policies.”⁹² The GHGRP serves this fundamental—indeed primary—purpose of the Act to support states in their efforts to prevent and control pollution. EPA should be weighing the needs of our States heavily as part of its mission to “carry out” section 101 of the Clean Air Act.

The very next section of the Act likewise provides that the “Administrator shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution,” and “encourage the making of agreements and compacts between the States for the prevention and control of air pollution.” *Id.* § 7402(a). It further provides that the “Administrator shall cooperate with and encourage cooperative activities by all Federal departments and agencies having functions relating to the prevention and control of air pollution.” *Id.* § 7402(b). The Act thus makes clear that one of its underlying purposes is supporting states, local governments, and other federal agencies in their efforts to prevent and control air pollution. EPA should weigh heavily the use of this data by states and other federal agencies—a critical reliance interest—as part of its mission to carry out section 102. *See supra*, Argument Section I.B.1, *infra*, Argument Section III.B.1, 2.

For example, the 13 federal agencies that prepare the National Climate Assessment have found the GHGRP data useful.⁹³ That use must be considered by EPA and supports maintenance of the program. Similarly, as the Proposal notes, the IRS has incorporated aspects of the GHGRP into its tax regulations aimed at preventing and controlling pollution, and maintenance of the GHGRP is critical to the efficacy, reliability and stability of those tax credits. The Proposal acknowledges that the “Treasury Department and the IRS may need to revise the regulation” if the GHGRP is repealed, but nevertheless claims that “EPA expects that such amendments could allow for different options for stakeholders to potentially qualify for tax credits, and believes that, regardless, this use of the GHGRP reporting data is not a purpose that triggers our authority under [Clean Air Act] section 114.” 90 Fed. Reg. at 44,599.

EPA is doubly wrong. Cooperating with other federal departments having functions related to the prevention and control of air pollution—and tax credits encouraging clean technology, including capturing carbon pollution, certainly relate to preventing and controlling air pollution—is a core purpose of the Clean Air Act under section 102(b). And EPA’s expectation that hypothetical

⁹²*Data Sets*, U.S. ENV’T PROT. AGENCY: GREENHOUSE GAS REPORTING PROGRAM (GHGRP), <https://www.epa.gov/ghgreporting/data-sets> [<https://perma.cc/WR6N-YE7P>] (last visited Oct. 21, 2025).

⁹³ *See generally* A.R. CRIMMINS ET AL., FIFTH NATIONAL CLIMATE ASSESSMENT (2023), https://toolkit.climate.gov/sites/default/files/2025-07/NCA5_2023_FullReport.pdf.

future amendments may allow stakeholders to qualify for the Congressionally directed tax credits is cold comfort to stakeholders relying on those credits for their business.

Additionally, as EPA's website explains, the "GHGRP data set is an important resource for developing the [Greenhouse Gas] Inventory, providing annual emissions information and other annual information, such as activity data and emissions factors, that can improve and refine national emission estimates and trends over time."⁹⁴ The United States signed the United Nations Framework Convention on Climate Change in June 1992, and ratified it in October 1992. Pursuant to the national communication reporting requirements under Articles 4.2 and 12 of the Convention, the U.S. must submit climate action reports. The U.S. State Department develops these reports in reliance on the Greenhouse Gas Inventory, which in turn relies on the GHGRP data. This is another example of EPA's cooperation with other federal agencies to prevent and control pollution, serving a core purpose of the Act as laid out in section 102(b).

The GHGRP likewise serves the purposes set forth in section 103 of the Clean Air Act, which directs the Administrator to "establish a national research and development program for the prevention and control of air pollution." 42 U.S.C. § 7403(a). As part of that program, the Administrator "shall . . . conduct, and promote the coordination and acceleration of, research, investigations, . . . [and] surveys . . . relating to the causes, effects . . . , extent, prevention, and control of air pollution," and shall "encourage, cooperate with, and render technical services . . . to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals." *Id.* Section 103(b) further provides that EPA is authorized to collect and make available through publication "the results of and other information . . . pertaining to such research and other activities," and that EPA shall "collect and disseminate" with public and private institutions and organizations "basic data" "pertaining to air pollution." Thus, the use of GHGRP data by states and by private sector entities and individuals serves a core purpose of the Clean Air Act, and must be considered in a determination of whether the GHGRP serves an underlying statutory purpose.⁹⁵

As explained at length *supra*, the GHGRP data is critical to EPA's implementation of its obligations under section 111 of the Clean Air Act. States also play a critical role under section 111(d) of the Act, which directs states to establish, implement, and enforce standards of performance for existing stationary sources. The States are currently administering regulations under section 111, including those related to methane pollution from oil and gas sources, and landfill pollution. For example, Colorado relies on the GHGRP to assist it in prioritizing sectors of the economy and cost-effective regulation. Colorado has used data reported to EPA through the GHGRP to understand and characterize emissions from landfills, coal mines, oil and gas

⁹⁴ *GHGRP and the U.S. Inventory of Greenhouse Gas Emissions and Sinks*, *supra* n.18.

⁹⁵ EPA has acknowledged that: "GHGRP information can also help industry identify opportunities for reduction and help communities identify nearby sources of greenhouse gas emissions. These data can be used to compare facilities or industries, track emissions from one year to the next, inform policy at the state and local levels, and provide important information to the finance and investment communities." *Id.*

operations, and more. Without this information, EPA will hinder Colorado’s ability to tailor its own section 111(d) plans to ensure the most cost-effective regulations.

Implementation of section 135 of the Clean Air Act, the Low Emission Electricity Program, likewise depends upon the GHGRP reporting data. Subsection (a)(5) of that provision directs EPA to “assess . . . the reductions in greenhouse gas emissions that result from changes in domestic electricity generation and use that are anticipated to occur on an annual basis through fiscal year 2031.” 42 U.S.C. § 7435(a)(5). When EPA issued that report, it naturally relied on information from the GHGRP and from the Greenhouse Gas Inventory (which relies on the GHGRP for data collection).⁹⁶ Subsection (a)(6), in turn, directs EPA to “ensure that reductions in greenhouse gas emissions are achieved through use of the existing authorities of this chapter, incorporating the assessment under paragraph (5).” *Id.* § 7435(a)(6). The GHGRP data serves the Clean Air Act purpose of allowing EPA to measure and demonstrate progress towards this Congressional goal.

As the Proposal acknowledges, Clean Air Act section 136, the methane emissions and water reduction incentive program for petroleum and natural gas systems, is directly tied, through statutory language, to the GHGRP reporting data. In section 136, Congress appropriated money for grants, rebates, contracts, loans, and other activities of the EPA to provide financial and technical assistance to facilities to prepare and submit greenhouse gas reports under the program. 42 U.S.C. § 7436(a)(1). Congress also levied a waste emissions charge that is applicable to facilities reporting more than 25,000 metric tons of CO₂ equivalent per year pursuant to the GHGRP, and defines applicable facilities according to whether they are reporters under that program. *Id.* § 7436(c)-(d). The charge they must pay is likewise bound up in the quantity of emissions the facility reports under the GHGRP. This Clean Air Act program quite literally cannot be administered without the GHGRP.

The GHGRP also serves the underlying purposes of Clean Air Act’s Prevention of Significant Deterioration Program (PSD). In the PSD and Title V permitting programs, States may use the GHGRP data, for example, to confirm whether a particular source’s GHG emissions are not de minimis and meet thresholds relevant for GHG limitations on “anyway” major sources that are still subject to GHG regulation pursuant to *Utility Air Regulatory Group v. EPA*, 573 U.S. 302 (2014) (*UARG*). Alternatively, States may use the data for purposes of determining Best Available Control Technology (BACT) GHG standards—for example, it might be useful for States to have data on GHG emissions from comparable sources around the country in determining BACT for a source.

⁹⁶ See generally EPA 430-R-23-004, *Electricity Sector Emissions Impacts of the Inflation Reduction Act*, U.S. ENV’T PROT. AGENCY (2023), https://www.epa.gov/system/files/documents/2023-09/Electricity_Emissions_Impacts_Inflation_Reduction_Act_Report_EPA-FINAL.pdf [<https://perma.cc/4L7F-8XU7>].

Additionally, the *Inventory of U.S. Greenhouse Gas Emissions and Sinks* report relies on GHGRP data as “an important input to the calculations of national-level emissions,”⁹⁷ and, for years, EPA has consistently relied on this report in promulgating emissions standards pursuant to sections 202, 213, and 231 of the Clean Air Act. For example, in its recent Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, EPA proposed to conclude that elimination of all GHG emissions from light-, medium-, and heavy-duty vehicle sources “would not reliably and meaningfully reduce elevated global concentrations of GHGs and, therefore, not reliably and meaningfully reduce the risks of climate change asserted in the Endangerment Finding.”⁹⁸ 90 Fed. Reg. 36,288, 36,312 (Aug. 1, 2025). EPA described its *Inventory of U.S. Greenhouse Gas Emissions and Sinks* report as “the best available data” to determine how much light- and medium-duty vehicles in the U.S. contribute to domestic GHG emissions and, subsequently, to global GHG emissions. 90 Fed. Reg. at 36,311. And, in 2016, EPA relied on the *Inventory of U.S. Greenhouse Gas Emissions and Sinks* report to conclude that GHG emissions “contribute to air pollution that endangers public health and welfare” under section 231. 81 Fed. Reg. 54,422, 54,471 (Aug. 15, 2016).

The GHGRP also serves the underlying purpose of allowing EPA to fulfill its obligations under section 309 of the Clean Air Act, relating to policy reviews. Under section 309, the Administrator shall review and comment in writing on the environmental impact of any matter relating to the duties and responsibilities under the Clean Air Act contained in any legislation or regulation proposed by any Department or agency, any newly authorized federal projects. The GHGRP permits the Administrator to accomplish this purpose where the proposed legislation, regulation, or project may have implications for the greenhouse gas emissions of any category of sources reporting under the GHGRP. Without the GHGRP data, the Administrator loses a key source of information to help guide policy implicating climate change across the federal government.

The GHGRP data is also used to “carr[y] out” section 304 of the Clean Air Act. There, Congress authorized “any person” to file an action to enforce “an emission standard or limitation”—including “any requirement” under section 111 of the Clean Air Act—and to enforce permitting requirements and individual permit conditions for major emitting facilities. 42 U.S.C. § 7604(a)(1), (a)(3), (f)(3); *see also* 42 U.S.C. § 7411(d) (requiring that state plans for emission guidelines be enforceable). EPA itself has taken the position that, without information “necessary to verify compliance,” members of the public are deprived of their ability to enforce Clean Air Act requirements under section 304. U.S. EPA, “Response to Comments for the Federal Register Notice on Air Plan Approval; Colorado,” at 46 (Apr. 25, 2023) (EPA-R08-OAR-2022-0632); *see also* 89 Fed. Reg. 63,818, 63,819 (Aug. 6, 2024).

Finally, as the Proposal acknowledges, the GHGRP supports the administration of the American Innovation and Manufacturing (AIM) Act. The AIM Act incorporates section 114, 42 U.S.C. § 7675(k), and EPA does not even try to dispute its authority to collect data pertaining to

⁹⁷ GHG Inventory Report, *supra* n.78, at ES-2, 1-2; *see id.*, Annex 9: Use of EPA Greenhouse Gas Reporting Program in Inventory, at A-591–95, Table A-252.

⁹⁸ Endangerment Comment, *supra* n.16, at 72.

hydrofluorocarbons (HFCs) under the GHGRP pursuant to that incorporation. *See* 90 Fed. Reg. at 44,598. The GHGRP data supports the administration of the AIM Act in multiple ways. EPA relies on historical data on HFC production as reported under GHGRP Subpart OO to derive AIM Act national production and consumption baselines, which are critical for determining how much HFCs can be produced or imported under the Act’s phasedown schedule. EPA relies on GHGRP data to assess companies’ market share for purposes of distributing AIM Act allowances, which dictate how many HFCs a company can produce or import in a given year.⁹⁹ EPA relies on GHGRP data to monitor how production and imports of HFCs are trending over time and adjust the program appropriately.¹⁰⁰ And EPA relies on the GHGRP data to bring enforcement cases to ensure the integrity of the AIM Act.¹⁰¹ EPA claims that the information could be alternatively collected “as part of any program directly related to the AIM Act,” but EPA has not identified any such program, explained how this would be done in a manner superior or equivalent to how the data is collected under the GHGRP, or taken any steps to collect the information that way. And the fact that EPA could theoretically repromulgate AIM Act-specific GHGRP regulations (an endeavor which would be costly, time-consuming, disruptive and unnecessary), is not a valid reason for disrupting the gathering of information that is needed now to support that Act’s ongoing implementation. Importantly, this use further undermines EPA’s assertion that the GHGRP does not serve the underlying purposes of the Clean Air Act to control and prevent pollution.

EPA’s blithe assertion that the GHGRP does not serve the underlying purposes of the Clean Air Act is robustly contradicted by the Act itself and EPA’s long-established practice of using the GHGRP data to implement multiple provisions of the Act.

C. EPA is authorized under section 136 to collect GHGRP subpart W data prior to 2034

EPA also now asserts that, because of the recent amendment to section 136(g) extending the period for collecting a charge on methane emissions to 2034, EPA no longer has the statutory authority to collect Subpart W reporting data until then. 90 Fed. Reg. at 44,596. But EPA’s argument conflates its duty to collect reporting data with its duty to collect a waste emission charge: the change regarding when EPA may impose a *charge* does not—explicitly or implicitly—impose any restriction on when EPA may require *reporting*.

In 2022, Congress added section 136 to the Clean Air Act to address waste emissions of methane. 42 U.S.C. § 7436. Specifically, as relevant here, section 136 requires EPA to revise its GHGRP requirements for Subpart W “[n]ot later than 2 years after August 16, 2022” to “ensure the

⁹⁹ *See GHGRP Data Relevant to the AIM Act*, U.S. ENV’T PROT. AGENCY, GREENHOUSE GAS REPORTING PROGRAM (Nov. 27, 2024), <https://www.epa.gov/ghgreporting/ghgrp-data-relevant-aim-act>; 88 Fed. Reg. 46,836, 46,848 (July 20, 2023).

¹⁰⁰ *See* 88 Fed. Reg. at 46,848.

¹⁰¹ *See Enforcement of the Greenhouse Gas Reporting Program: HFC Importers*, U.S. ENV’T PROT. AGENCY, ENFORCEMENT (Sept. 16, 2025), <https://www.epa.gov/enforcement/enforcement-greenhouse-gas-reporting-program-hfc-importers> [<https://perma.cc/6L2Y-2RCE>].

reporting under such subpart . . . are based on empirical data, accurately reflect the total methane emissions and waste emissions from the applicable facilities, and allow owners and operators of applicable facilities to submit empirical emissions data . . .” 42 U.S.C. § 7436(h). Section 136 also directs EPA to “impose and collect a charge on methane emissions” from oil and gas facilities reporting more than 25,000 metric tons of CO₂ equivalent per year under Subpart W of the GHGRP. *Id.* § 7436(c). Therefore, this Congressionally required revision of Subpart W serves two express and independent purposes: 1) to improve and continue reporting methane emissions under Subpart W, and 2) to support calculation of the waste emissions charge. Congress originally directed EPA to impose and collect the charge beginning with “emissions reported for calendar year 2024 and for each year thereafter.” Inflation Reduction Act, Pub. L. No. 117-169, § 136(g), 136 Stat. 2,073, 2,075 (2022) (codified at 42 U.S.C. § 7436(g)). But, on July 4, 2025, Congress amended Clean Air Act section 136(g) to require EPA to impose and collect the charge beginning with “emissions reported for calendar year 2034 and for each year thereafter.” 42 U.S.C. § 7436(g) (amended by One Big Beautiful Bill Act, Pub. L. No. 119-21, § 60012, 139 Stat. 72, 156 (2025)).

Nothing in the text of section 136 restricts EPA from collecting data for Subpart W sectors between now and Reporting Year (RY) 2034. Rather, the plain text of the statute explicitly contemplates and provides funding for continuation of reporting prior to RY2034: section 136(a)(1) provides “\$850,000,000, to remain available until September 30, 2028, for grants, rebates, contracts, loans, and other activities of the [EPA] for the purposes of providing financial and technical assistance to owners and operators of applicable facilities *to prepare and submit greenhouse gas reports under subpart W of part 98.*” *Id.* § 7436(a)(1) (emphasis added). Additionally, section 136(h) requires EPA to revise the subpart W reporting requirements “not later than 2 years after August 16, 2022.” *Id.* § 7436(h). Congress expressly intended the Subpart W reporting regulations to be in place by August 16, 2024, and it expressly contemplated and provided funding for reporting under Subpart W between now and 2028. Notably, Congress directed EPA to update reporting requirements for all of Subpart W, including the natural gas distribution segment that EPA now proposes to remove entirely from the reporting program. The text itself thus demonstrates congressional intent for continual emissions reporting under Subpart W pursuant to section 136. Moreover, section 136(g) states that EPA may not impose or collect a “charge . . . with respect to emissions reported for calendar year 2034 and for each year thereafter” until reporting year 2034. *Id.* § 7436(g). However, this restriction on when EPA may impose a charge does not—explicitly or implicitly—impose any restriction on when EPA may require reporting.

EPA’s proposal to halt reporting until 2034 is yet another thinly veiled attempt to shirk its responsibilities and avoid having to justify its blatantly unreasonable decision-making.

II. EPA DOES NOT HAVE AUTHORITY TO REPEAL THE GHGRP

Congress did not just clearly authorize EPA to promulgate and implement the GHGRP, *supra*, Background Section I, Argument Section I, it also required EPA to maintain a rule to require mandatory GHG reporting from all sectors. As explained *supra*, Background Section I.A, in the

2008 and 2009 Consolidated Appropriations Acts, Congress “required” EPA to promulgate and implement a greenhouse gas reporting rule covering “all sectors of the economy.” Congress has never rescinded this legislative direction, and therefore EPA has an obligation to maintain a mandatory greenhouse gas reporting program covering all sectors of the economy.

While there is typically a presumption against the continuing application of appropriations acts, that presumption is easily overcome in this case. Through the 2008 and 2009 Consolidated Appropriations Acts, Congress explicitly (and unusually) directed new substantive rulemaking and specified the scope of that rulemaking. And, in the Omnibus Appropriations Act of 2009, Congress directed EPA to “begin implementation” of the reporting program. Pub. L. No. 111-8, 123 Stat. 524, 729 (2009). That statutory language made clear that this program would reach beyond the term of the specific appropriations act. It would make little sense for EPA to spend two years developing a program, only to have it terminate shortly after the Agency “beg[an] implementation.” *Id.* Likewise, it would make little sense for Congress to require “mandatory reporting of greenhouse gas emissions above appropriate thresholds” in a rule covering “all sectors of the economy” for only one fiscal year. Indeed, the accompanying joint explanatory statement specified that the Administrator shall determine “how frequently reports shall be submitted to EPA”—a direction that clearly contemplates an ongoing reporting requirement beyond a single year. This specific language in the appropriations acts is doing far more than imposing the usual direction on how funds shall be spent; it requires EPA to promulgate and implement a rule. And Congress would have understood that EPA rules in general do not expire or sunset. Notably, the joint explanatory statement specified that the bill language was “provided in the administrative provisions section,” Statement at 1254, and such “general” or “administrative” provisions in an appropriations bill “may . . . impose new duties on an agency or provide the agency new authorities.”¹⁰² Thus, the best reading of the 2008 and 2009 Consolidated Appropriations Acts is that they mandate maintenance of the required greenhouse gas reporting rules covering all sectors of the economy. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 424 (2024).

Moreover, the proposed repeal of the GHGRP cannot be squared with the Inflation Reduction Act’s methane emissions and waste reduction incentive program under section 136, just discussed. Not only did this statutory program tie itself directly to the existence of the GHGRP, but it also directed EPA to “revise the requirements of subpart W of part 98 of title 40, Code of Federal Regulations,” i.e. the GHGRP, “to ensure reporting under such subpart . . . [is] based on empirical data” and meet other requirements. Congress would not have directed EPA to revise its mandatory GHG reporting program if it believed that the language requiring that program had expired over a decade earlier. The integration of the GHGRP into new statutory requirements and direction to revise it according to Congress’s specific direction reinforces that maintenance of the GHGRP is nondiscretionary.

¹⁰² SEAN STIFF, CONG. RSCH. SERV., R46899, Regular Appropriations Acts: Select Statutory Interpretation Issues (2021), <https://www.congress.gov/crs-product/R46899#ifn68>.

Even if Congress had not compelled the maintenance of the GHGRP (it did), EPA would still be obliged to maintain it under administrative law principles, because the data that is being collected through the GHGRP is essential to support nondiscretionary regulatory programs. *See U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 644 (D.C. Cir. 2016) (explaining that where an agency has a duty under the Clean Air Act to regulate certain air pollution, then the Agency is also likewise “obligated to collect the data” that is needed to support such regulation using the authority provided in the Clean Air Act section 114). Here, EPA has properly determined that “greenhouse gases” contribute to deleterious air pollution, which has triggered a mandatory duty to regulate greenhouse gases from vehicles and other significant contributors. Because the data at issue is essential to supporting and further developing those mandatory regulatory programs, EPA has a mandatory duty to continue to collect the data and maintain the GHGRP.

III. EPA’S ACTION IS ARBITRARY AND CAPRICIOUS

The Proposal’s alternate basis for rescinding the GHGRP under its theory of discretionary section 114 authority also fails because EPA’s rationale is arbitrary and capricious in several respects. A final EPA action taken under the Clean Air Act will be vacated if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or if it was promulgated “without observance of procedure required by law.” 42 U.S.C. § 7607(d)(9)(A), (D);¹⁰³ *see also Util. Air Regul. Grp. v. EPA*, 744 F.3d 741, 747 (D.C. Cir. 2014). An agency action is arbitrary or capricious where it is not “reasonable and reasonably explained.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). An agency must provide “a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Motor Vehicles Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal citation and quotation marks omitted). The requirement is satisfied when the agency’s explanation is clear enough that its “path may reasonably be discerned.” *Id.* (citing *Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 286 (1974)). “But where the agency has failed to provide even that minimal level of analysis, its action is arbitrary and capricious and so cannot carry the force of law.” *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016).

Agencies must also provide a reasoned explanation for changes in existing policies. *See id.* An agency seeking to change existing policy “must at least display awareness that it is changing position and show that there are good reasons for the new policy.” *Id.* (internal quotation marks and citation omitted). “An agency may not . . . depart from a prior policy *sub silentio* or simply disregard rules that are still on the books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Further, where a new policy rests on factual or legal determinations that contradict those underlying the agency’s prior policy, the agency must provide a more detailed explanation for its policy. *Id.* at 515–16. “Unexplained inconsistency” in agency policy is “a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.” *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005); *see also Encino Motorcars*, 579 U.S. at 222. An arbitrary and capricious regulation of this sort is itself unlawful

¹⁰³ EPA has designated this rulemaking as subject to the Clean Air Act’s specific rulemaking and judicial review provision for Clean Air Act rules. 42 U.S.C. § 7607(b), (d).

and receives no deference. *Id.* Agencies also must provide a more detailed justification “when [their] prior policy has engendered serious reliance interests that must be taken into account.” *Fox*, 556 U.S. at 515.

Here, if finalized, the Proposal would mark a sharp reversal in policy and would be arbitrary and capricious in at least five major ways. First, EPA’s conclusion that the data collected by the GHGRP is “unnecessary” represents an unexplained change in the agency’s position and one that fails to adequately consider the value of the information in implementing the Clean Air Act and other statutes. Second, EPA fails to recognize the scope and extent to which states, local government, industry, researchers, and the public have relied on the GHGRP and the significant negative impacts rescinding the program will have on these stakeholders. Third, EPA fails to acknowledge the significant costs rescinding the program will impose on these stakeholders, overstates cost savings to industry, and entirely ignores the wide-ranging benefits the program has provided for over fifteen years that would be lost going forward if the Proposal is adopted. Fourth, EPA fails to adequately consider alternatives. And last, EPA’s Proposal is prejudged and its rationale is pretextual. EPA should withdraw the Proposal, which it cannot support as anything other than an arbitrary and capricious attempt to abdicate its responsibility to continue to systematically collect information on greenhouse gas emissions as an air pollutant.

A. EPA cannot support its new determination that collecting this data systematically is “unnecessary”

EPA justifies rescinding the bulk of the GHGRP rule based on a new, contradictory position that “the Administrator no longer believes the information collected under the rule is necessary to implementing relevant provisions of the [Clean Air Act].” 90 Fed. Reg. at 44,597-98. But this rationale directly contradicts key determinations EPA made in promulgating the rule in the first place, it is unmoored from EPA’s statutory duties to implement the Clean Air Act, and it is untethered from established and demonstrated agency practice in doing so using the data from the GHGRP. In short, EPA *does* need the data it collects in the GHGRP.

In proposing to repeal nearly all of its GHG emission reporting requirements (and delay the rest), EPA fails to acknowledge or explain crucial inconsistencies between its longstanding prior position that it needs this data. EPA’s disjointed new position that it does not, and apparently never did, need this data is unsupported. *See Brand X Internet Servs.*, 545 U.S. at 981 (“Unexplained inconsistency [in agency policy] is . . . a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.”). The agency’s interpretation in the Proposal is also completely devoid of any recognition of the dire threat posed by climate change and the ongoing need for GHG emissions data to inform future climate change policy decisions, including EPA’s own Clean Air Act regulatory actions. Far from extraneous, such informed policymaking is a central task of protecting the nation from air pollution—EPA’s primary duty under the Clean Air Act. *See State Farm*, 463 U.S. at 43 (“[A]gency rule would be arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem.”).

1. EPA *does* need the GHG data collected by the GHGRP to implement the Clean Air Act

EPA needs the data collected in the GHGRP going forward, and it has not provided a sufficient explanation for its new belief that GHG emissions data is no longer necessary to carry out its regulatory responsibilities under the Clean Air Act and to inform future climate change policy decisions. See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009) (where a new policy rests on factual or legal determinations that contradict those underlying the agency’s prior policy, the agency must provide a more detailed explanation for its policy). Indeed, EPA has consistently maintained that collecting GHG emissions data is necessary for the past 15 years. EPA concedes, as it must, in the preamble to the Proposal, that it *has* used GHGRP data quite extensively in past years for regulatory purposes, including to regulate petroleum and natural gas, municipal solid waste landfill, and carbon capture and sequestration source categories. EPA admits that it has relied on data from the GHGRP “to inform the development of new source performance standards (NSPS) and emission guidelines (EG) under [Clean Air Act] section 111 for oil and natural gas facilities (81 FR 35824; June 3, 2016), municipal solid waste landfills (81 FR 59332; August 29, 2016), and fossil-fuel fired electricity generating units (89 FR 39798; May 9, 2024).” 90 Fed. Reg. at 44,598.

EPA now attempts to minimize its past reliance on the data by asserting that it has not elected to develop emission standards for the majority of the source categories under the Rule. But this argument misses the mark. Data collected from all of the source categories informs decisions about *which* source categories should be subject to further regulation.

EPA has used GHGRP data to inform its regulatory activities in the past, and this data is no less necessary today than it was when the GHGRP was established. Just as when it adopted the program in 2009, EPA continues to need GHG emissions information from fuel suppliers to analyze “whether to proceed, and particular options for how to proceed, under [Clean Air Act] section 211(c) regarding fuels, or to inform action concerning downstream sources under a variety of Title I or Title II provisions,” under the Clean Air Act. 74 Fed. Reg. at 56,265. EPA fails to explain how this is not still the case today. Indeed, when EPA adopted the GHGRP Rule in 2009 it recognized the need for, and extensive potential uses of, such data carrying out several of its statutory purposes under the Clean Air Act. 74 Fed. Reg. at 56,264–65, 56,286. Since 2009 until this Proposal, EPA has consistently recognized that “[a]ccurate and timely information on GHG emissions is essential for informing many future climate change policy decisions.” *Id.* at 56,265. In fact, EPA promulgated its 2009 rule creating the GHGRP for the express purposes of gathering “GHG information to assist EPA in assessing how to address GHG emissions and climate change under the Clean Air Act.” *Id.* EPA explained that “emissions from direct emitters should inform decisions about whether and how to use [Clean Air Act] section 111 to establish new source performance standards (NSPS) for various source categories emitting GHGs, including whether there are any additional categories of sources that should be listed under [Clean Air Act] section 111(b).” *Id.* This is exactly what EPA has done. As EPA concedes, it has used this data to set “new source performance standards (NSPS) and emission guidelines (EG) under [Clean Air Act] section 111,” for example, in setting GHG, “for oil and natural gas

facilities (81 Fed. Reg. 35,824 (June 3, 2016)), municipal solid waste landfills (81 Fed. Reg. 59,332 (Aug. 29, 2016)), and fossil-fuel fired electricity generating units (89 Fed. Reg. 39,798 (May 9, 2024)).” 90 Fed. Reg. at 44,598.

In addition, EPA fails to acknowledge that it has also used the data to inform its regulatory decision-making to require owners/operators of new and modified major stationary sources to consider GHG emissions under the Prevention of Significant Deterioration program, *see UARG v. EPA*, 573 U.S. 302 (2014), and to set other GHG standards, such as GHG emission standards for new natural gas power plants, 89 Fed. Reg. 39,798, 39,798 (May 9, 2024), light- and heavy-duty motor vehicles and engines under Title II of the Act, 76 Fed. Reg. 57,106, 57,106 (Sept. 15, 2011) (model years 2014-2018); 81 Fed. Reg. 73,478, 73,478 (Oct. 25, 2016) (model years 2019-2027). EPA also adopted stricter standards for model year 2017-2025 light-duty vehicles, 77 Fed. Reg. 62,624, 62,624 (Oct. 15, 2012), as well as standards aircraft, 86 Fed. Reg. 2,136, 2,136 (Jan. 11, 2021).

Further, EPA is also required under section 111 of the Act to update its emissions standards for new sources “at least every 8 years,” and will need the data to fulfill that statutory mandate. 42 U.S.C. § 7411(b)(1)(B). EPA is already overdue to update its emissions standards for municipal solid waste landfills. Additionally, under Clean Air Act section 111(g), EPA must be ready to set standards or explain why such standards are not necessary for any category of sources when asked to set standards for a particular source category by a State Governor. 42 U.S.C. § 7411.

EPA suggests that, despite steadily regulating more and more of the largest categories of stationary sources of GHG emissions, it has not yet implemented standards for “most additional source categories covered by the GHGRP.” 90 Fed. Reg. at 44,598. But this simply states the obvious: EPA has set standards for some, but not all source categories, prioritizing those with the greatest emissions. And the Proposal is conspicuously silent on the fact that the GHGRP was useful for developing EPA’s policy to decide which source categories initially to regulate and then for setting those regulations.

The only real explanation EPA offers for this about-face on whether the data is helpful for EPA’s development of policy and regulation, is that it is “not planning to develop such regulations at this time.” But EPA nowhere explains how such a failure could be lawful in light of the Clean Air Act’s plain commands or, even if lawful, could render the data unhelpful for policy analysis. Even if EPA does not move forward with regulating GHG emissions for additional industrial categories under Clean Air Act section 111 in the next few years, that does not mean that a robust data set of GHG emissions lacks utility, especially for purposes of fulfilling or helping fulfill multiple statutory mandates.

And indeed, accepting, for the sake of commenting, EPA’s current policy interest in refraining from developing additional regulations, detailed data is still useful to evaluate decisions not to proceed with regulations for particular categories based upon their relative contribution to emissions. Indeed, EPA relied on data in the Greenhouse Gas Inventory, which it produces from data in the GHGRP, in proposing its regulation to rescind the Carbon Pollution Standards for

power plants. *See supra*, Argument Section I.B.1. Without continuing to collect the comprehensive, systematic, and robust data set EPA has collected for over a decade, EPA, Congress, and the public will face critical information gaps. And in any case, EPA's desire not to regulate GHGs is a policy goal that is inconsistent with its statutory obligations and not itself a justification for changing its position on the utility of the data for policy development and regulation.¹⁰⁴ Further, as explained *supra*, the categories that have already been subject to emission standards will remain significant sources of emissions—and the data from the GHGRP will be important to inform decisions about whether and when to tighten those standards going forward.

In addition to these direct regulatory needs for the data to fulfill its duties under the Clean Air Act, EPA also continues to need the detailed GHG data collected in the GHGRP for “implementation of [Clean Air Act] section 103(g) regarding improvements in non-regulatory strategies and technologies for preventing or reducing air pollutants.” 74 Fed. Reg. at 56,265, 56,286. Indeed, EPA has launched a variety of nonregulatory programs aimed at reducing emissions of GHGs, including Climate Leaders, ENERGY STAR, AgSTAR, the Coalbed Methane Outreach Program, the Natural Gas STAR Program, the Landfill Methane Outreach Program, as well as voluntary partnerships with particular industries to reduce high GWP GHG emissions.¹⁰⁵ As EPA recognized when promulgating the 2009 Rule to create the GHGRP, collecting detailed GHG information is critical to the program:

The information gathered by this rule will improve EPA's research and development program as it relates to GHGs and climate change, as well as the Agency's nonregulatory approaches to preventing or reducing air pollutants. For example, information from direct emitters will inform our consideration of energy conservation, end-use efficiency and fuel-switching as possible strategies for reducing overall emissions. Additional data will also enhance EPA's implementation of various programs aimed at encouraging voluntary reductions in GHG emissions. This additional data which will be from many of the nation's largest sources of GHG emissions, fuel suppliers, and suppliers of industrial gases will help EPA by providing more detailed information on possible sources and industrial sectors for EPA to work with in the context of these programs and by providing important information that can be used to develop and enhance GHG management tools for key sectors, improve consumer oriented programs and information, perform quality assessments of existing tools, and measure progress in reducing emissions from key sectors.

As discussed below, it is entirely appropriate for EPA to gather information for purposes of carrying out section 103 in this rule, and doing so is not inconsistent with the language stating that nothing in 103(g) should be construed as authorizing the imposition of control requirements. That language in 103(g) is best read to mean that EPA must still make

¹⁰⁴ Endangerment Comment, *supra* n.16; Climate Science Comment, *supra* n.16; Vehicles Comment, *supra* n.16; Power Plants Comment, *supra* n.16.

¹⁰⁵ RTC Vol. 9, at 11-12.

whatever requisite findings may be required under other sections of the [Clean Air Act] before imposing control requirements, even as EPA investigates non-regulatory options for reducing emissions.¹⁰⁶

EPA fails to explain how the GHG information collected in the GHGRP has suddenly lost its utility to assist EPA in implementing its research function and development of nonregulatory programs under section 103 of the Clean Air Act. Indeed, the data collected under the GHGRP serves a critical role to “provide EPA, other government agencies, and outside stakeholders with economy-wide data on facility-level (and in some cases corporate-level) GHG emissions, which should assist in future policy development.” 74 Fed. Reg. at 56,265. This is only more the case today than it was when EPA first promulgated the GHGRP rule in 2009, as the devastating impacts of climate change have multiplied and become more well-recognized, and the need for understanding and managing GHG emissions has become correspondingly more urgent and apparent.¹⁰⁷ While the Proposal recognizes at the most general level that it represents a change in policy, EPA resists acknowledging and explaining specific changes in policy in this rule compared to its longstanding and well-supported prior agency positions and the rationales for creation of the GHGRP that it articulated when promulgating the original rule in 2009. For example, while the Proposal acknowledges, as it must, that EPA created the GHGRP in order to develop and maintain “a robust data set for policy analysis,” and then acknowledges some of the ways it has done so over the past 15 years under Clean Air Act section 111, the Proposal then inexplicably asserts that “the information collected under the GHGRP is also not necessary nor helpful to develop such regulations or to inform development of new source performance standards under [Clean Air Act] section 111.” 90 Fed. Reg. at 44,598. EPA fails to squarely acknowledge, much less adequately explain, this change in position on the utility of the data for policy and regulatory development.

EPA also needs the GHGRP data in order to provide statutorily required assistance to States’ Air Pollution Control Agencies who have requested that assistance under the cooperative federalism scheme of the Clean Air Act, including under section 103(a)(3). 42 U.S.C. § 7403(a)(3). State Air Pollution Control Agencies across the country have been working to address greenhouse gas emissions in myriad ways and have specifically requested that EPA maintain the GHGRP in order to provide this critical information on GHG emissions as they work to address the specific problem of GHG air pollution and climate change.¹⁰⁸

Assisting State Clean Air Agencies under Clean Air Act section 103(a) by maintaining the GHGRP is directly in line with Congress’ vision for cooperative federalism at the core of the Clean Air Act’s approach to addressing air pollution problems:

- (1) to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population;

¹⁰⁶ *Id.* at 12.

¹⁰⁷ See Endangerment Comment, *supra* n.16, Appendix 1 (State and Local Government Climate Change Impacts).

¹⁰⁸ Letter from State Air Pollution Control Agencies to EPA (Oct. 31, 2025).

- (2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;
- (3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and
- (4) to encourage and assist the development and operation of regional air pollution prevention and control programs.

Clean Air Act § 101(b), 42 U.S.C. § 7401(b). Each of these core purposes would be furthered by maintaining the GHGRP, thereby enabling EPA and states to continue to make use of program data for the purpose of developing and implementing their own pollution prevention programs.

Subsections 103(a) and 103(a)(3) specifically direct that the Administrator “*shall*” “conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency . . . *if he is requested to do so by such agency.*” 42 U.S.C. § 7403(a)(3) (emphases added). State Air Pollution Control Agencies have requested that the GHGRP “be maintained in its current form so that our States may continue to use the valuable data generated by the Program to inform appropriate state actions to protect the health and welfare of our citizens.”¹⁰⁹ Under these circumstances, EPA has a mandatory statutory duty under Clean Air Act section 103(a) to provide the requested assistance and maintain the GHGRP. Moreover, denying such a request and rescinding the GHGRP without a justification that addresses the clear need for the data for both the federal, as well as state and local, governments is arbitrary and capricious.

2. Comparable data is not available through other sources

EPA repeatedly states that it can obtain the same data in other ways, but EPA never explains how it could do so, and the facts demonstrate that this is not the case. *See* 90 Fed. Reg. at 44,595, 44,597-98. EPA claims that it could obtain the data through unidentified existing data sets or targeted, one-time information collection requests. But both of these alternatives would fail to deliver the same scope of information available from continuing the GHGRP and thus fail to serve the critical interests the GHGRP has long served. The data collected in the GHGRP provides the most comprehensive national data set on direct facility-level and fuel-related greenhouse gas emissions in the United States and—unlike one-time information collection requests—documents emission trends over time at a national, long-term scale, which allows factors affecting emissions to be identified and understood.

First, other existing available data sets are inadequate to serve EPA’s regulatory purposes. While there are various other data sets related to GHGs, none have the breadth and depth of the GHGRP with respect to sources covered by the program, nor are emissions trends available in

¹⁰⁹ *Id.*

those data sets directly comparable to the long time-series of data available in the GHGRP to track trends emerging over the past 15 years. In many cases, alternative data sets also lack detail to the facility-level, which is often critical for more granular analysis to support policy development. When promulgating the GHGRP Rule in 2009, EPA explained that “[t]his GHG reporting program supplements and complements, rather than duplicates, existing U.S. government programs (e.g., climate policy and research programs).” 74 Fed. Reg. at 56,265. Other data sets such as those collected under the Acid Rain Program (ARP), by individual state reporting programs, and the National Emissions Inventory (NEI), for example, are significantly different in scope. In addition, alternative data sets may lack process or unit level emissions data, or monitoring and activity data that is necessary for EPA’s robust emissions verification procedures that assure a high level of confidence in GHGRP data. *See* 74 Fed. Reg. at 56,283. EPA fails to substantiate its conclusory assertion that the crucial data collected in the GHGRP could now “be addressed through collection from other sources.” 90 Fed. Reg. at 44,597; *see also id.* at 44,595, 44,598 (repeating same bare assertion).

Second, EPA’s idea that it could always issue “particularized [Clean Air Act] section 114 [information collection requests]” to sources to obtain GHG data is hardly a substitute, or adequate stand-in for the robust comprehensive reporting program EPA already has, and would be inadequate in a number of ways. *See* 90 Fed. Reg. at 44,597. Such one-time targeted information collection requests would not provide time-series data that could be analyzed to reveal trends across sources, time, sectors, or geography to evaluate effectiveness of particular incentives, regulations, or policies. Nor would it provide a comprehensive picture of emissions in the country across all major industrial sectors to contextualize a source or source category’s emissions and prioritize policymaking efforts and protect public health and welfare. EPA’s failure to explain how targeted information requests can serve as an adequate substitute for the GHGRP’s comprehensive dataset renders the Proposal arbitrary and capricious. *See State Farm*, 463 U.S. at 43 (concluding that an agency must provide “a satisfactory explanation for its action, including a rational connection between the facts found and the choice made”). And EPA’s failure to explain in the Proposal how it would utilize one-time data collections to support all of the critical functions the GHGRP currently plays in carrying out various provisions of the Clean Air Act renders this public comment period inadequate. *Cf. District of Columbia v. U.S. Dep’t of Agric.*, 496 F. Supp. 3d 213, 234-35 (D.D.C. 2020) (finding agency failure to provide “meaningful[] opportunity to participate in the notice-and-comment process” where “agency’s explanation was far from ‘clear[],’” and “depriv[ed] plaintiffs and other interested parties of the opportunity to test the agency’s proffered conclusions and analysis, by providing correction, context or alternative interpretations of the data on which the agency relied”).

Indeed, the agency’s statements in the Proposal directly contradict statements the agency made just two years ago in a proposal to continuously collect information about emissions of hazardous air pollution. Proposal, Revisions to the Air Emissions Reporting Requirements, 88 Fed. Reg. 54,118 (August 9, 2023). There, EPA explained that regular reporting was needed because previous regulatory actions had “required extensive one-time data collection efforts,” and that “[s]uch intermittent data collections require[d] affected entities to take additional time

and incur additional costs due to the often hurried, non-routine, nature of the requests.” *Id.* at 54,126. “This sporadic approach,” EPA continued, “results in owner/operators having to re-engage in an ad-hoc process with new requirements and instructions each time . . . it’s an unpredictable stop-and-go process.” *Id.* EPA posited that “[c]omplete, predictable, and routine HAP reporting would significantly lessen the need for these intermittent data collections, thus reducing the burden to owners/operators.” *Id.* In that proposal, EPA proposed to start up a new regular reporting program, with attendant start-up costs. Here, by contrast, EPA proposes to eliminate an already smoothly operating data collection program, without adequately considering the costs and disruptions that would be caused by implementing sporadic, one-time data collection efforts, and without considering its prior statements in this regard. *See Brand X Internet Servs.*, 545 U.S. at 981 (Unexplained inconsistency” in agency policy is “a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.”).

B. EPA fails to adequately consider the reliance interests that the GHGRP has engendered

The Proposal is also arbitrary and capricious because it fails to adequately consider the significant reliance interests that the GHGRP has engendered in its over 15 years in place. *See Fox*, 556 U.S. at 515 (Agencies must provide a more detailed justification “when [their] prior policy has engendered serious reliance interests that must be taken into account.”). An agency cannot ignore this important aspect of the problem. *See State Farm*, 463 U.S. at 43–46. Courts have repeatedly held that agency analyses that ignore or give spurious treatment to important considerations are infirm. *Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011); *Pub. Citizen, Inc. v. Mineta*, 340 F.3d 39, 58 (2d Cir. 2003); *Sierra Club v. Sigler*, 695 F.2d 957, 979 (5th Cir. 1983); *Getty v. Fed. Savs. & Loan Ins. Corp.*, 805 F.2d 1050, 1055, 1057 (D.C. Cir. 1986); *Sierra Club v. U.S. Dep’t of Interior*, 899 F.3d 260, 293 (4th Cir. 2018). For this reason, agencies must provide a more detailed justification for a change in policy “when [their] prior policy has engendered serious reliance interests that must be taken into account.” *Fox*, 556 U.S. at 515. EPA has failed to detail and weigh the reliance interests the GHGRP has engendered in its over 15 years as pillar of climate policy development, including at the state and local level, research institutions, nongovernment organizations (NGOs), and in business and industry.

1. EPA fails to address the significant reliance interests of States and Local Governments

As described above in Background Section II.D, many state and local governments rely in numerous ways on the GHGRP as a foundational building block for their own policy development, as well as for regulation and tracking of greenhouse gases under their own reporting and regulatory programs. In particular, states and cities rely on the GHGRP in four major ways: (1) as a comprehensive source of widely recognized GHG emissions calculation methodologies; (2) for the collection of data through the Program’s electronic reporting infrastructure, e-GGRT; (3) to assist states and cities in developing their own GHG inventories using federal data including data from the GHGRP (e.g., through customization of the SIT

inputs); and (4) using data directly from the GHGRP's FLIGHT or EnviroFacts data portals for cross-checking state-reported data and for policy development.

EPA's Proposal fails to characterize and analyze the scope and nature of the significant reliance interests engendered by EPA's longstanding GHGRP. EPA largely ignores the impact of rescinding the program on states and cities and other stakeholders who have relied on the program and the additional qualitative and financial costs associated with rescinding the program. Instead, EPA asks for comment on this issue and includes only a few vague token references to many States and Local Governments' reliance on the GHGRP. *See* 90 Fed. Reg. at 44,597–98, 44,605. Then, rather than making any effort to identify and analyze the impact of rescinding the GHGRP on states, cities, and other stakeholders, EPA asserts in the Proposal that states can simply collect greenhouse gas information themselves “under state authorities to support state programs.” 90 Fed. Reg. at 44,598. But this does not identify, characterize, or grapple with the consequences of EPA's proposed action for states, cities, and other stakeholders who rely on the program in numerous ways, making it apparent that this reliance interest plays no real role in EPA's decision-making process. Meanwhile states and cities stand to suffer significant negative impacts from EPA's Proposal to rescind the GHGRP in four major ways.

First, elimination of the GHGRP's reporting calculation methodologies for nearly all industries would have a significant domino effect on state reporting programs that have incorporated these methods into their own regulations by reference. *See supra*, Background Section II.D.1. For example, Massachusetts's state GHG reporting program requires only those stationary sources to report emissions for which EPA specifies methods for quantifying emissions in EPA's GHGRP regulations at 40 C.F.R. Part 98.¹¹⁰ EPA's rescission of these methods, as it has proposed, will create uncertainty for regulated entities in Massachusetts seeking to comply with state-level regulations. EPA has also failed to consider that significant lead time is required to allow states like Massachusetts to complete the necessary rulemakings to amend its reporting program rules, a task which will require significant state resources.

Even for state programs for which the reporting requirement is not so closely linked to the existence of applicable EPA methods, many states incorporate by reference EPA's methods specified in 40 C.F.R. Part 98 into state regulations for some or all of the reporting categories. This includes state programs in Colorado,¹¹¹ Hawai'i,¹¹² Oregon¹¹³ and Washington State,¹¹⁴ as well as New York State's proposed reporting program.¹¹⁵ If the Proposal is adopted, these states will be required to adopt their own industry specific methodologies for numerous reporting categories, and then take on the task of maintaining and updating those methods as needed over

¹¹⁰ 310 CODE MASS. REGS. § 7.71(2).

¹¹¹ COLO. ADMIN. CODE § 1001-26 (incorporating by reference 40 C.F.R. Part 98 (effective January 1, 2025)).

¹¹² HAW. ADMIN. RULES §11-60.1-115 (b).

¹¹³ OR. ADMIN. RULES 340-215-0010 (incorporating by reference portions of 40 C.F.R. Part 98 (effective December 9, 2016)).

¹¹⁴ WA. ADMIN. CODE §§ 173-441-050(2), 173-441-120.

¹¹⁵ N.Y. STATE DEPT. CONSERVATION: RECENTLY PROPOSED AND ADOPTED REGULATIONS AND POLICIES, 6 NYCRR PART 253, *Mandatory Greenhouse Gas Reporting*, <https://dec.ny.gov/regulatory/regulations/proposed-emergency-recently-adopted-regulations/air-pollution-regulatory-revisions> (last visited Oct. 21, 2025).

time. Not only will this impose direct impacts on these states in terms of costs and time to update their rules as needed, it will also decentralize the methodologies, allowing the methods to drift apart from each other over time in a geographic patchwork that will adversely impact industry operating in and reporting emissions in multiple states. That impact would increase costs of reporting for reporters who currently enjoy streamlined and consistent reporting methods across EPA and multiple states, creating inefficiencies from differences in reporting across jurisdictions.

Moreover, the comprehensive collection of methods developed in the GHGRP and set forth in the subparts to Part 98, represent a process of continuous improvement that has sought to apply best practices in emissions quantification, accounting, and reporting. This process of improvement and refinement at the national level which states have relied on will also be lost if the program is rescinded. EPA has the relevant technical, scientific, and legal expertise and is well-positioned to continue such efforts and to advance the bottom-up facility-level methodologies for estimating GHG emissions and removals, which complement top-down observational approaches by filling voids in emissions estimates. *See e.g.*, 89 Fed. Reg. 42,062 (May 14, 2024) (EPA's recent regulations updating the GHGRP to comply with the new statutory comment to rely on empirical data in 42 U.S.C. § 7436(h)).

Second, elimination or significant alteration of EPA's electronic reporting tool e-GGRT poses a direct and substantial impact to states such as Colorado and Washington that have relied on this tool to streamline reporting in their states for many years. *See supra*, Background Section II.D.2. Given that there are 47 categories of reporters, each with different greenhouse gas emissions calculation methodologies, the use of e-GGRT provides an essential service for reporters to organize and streamline their entry of these emissions reports, that states have relied on for their state-level reporting programs as well. As detailed below in Argument Section III.D.1, the cost for a state to develop its own version of the e-GGRT electronic reporting tool is estimated at \$3 million, with annual operating/upkeep costs of \$250,000.

Third, many state and local Governments will be impacted by the loss of access to federal data and GHGRP-related EPA electronic resources that support access to and use of the data including the Facility Level Information on Green House gases Tool (FLIGHT)¹¹⁶, EnviroFacts¹¹⁷, and the State Inventory Tool (SIT). *See supra*, Background Section II.D.3. For example, Washington State has relied on GHGRP data accessed through these electronic resources to track its greenhouse gas emissions since its establishment of the 1990 baseline emission in 2007 (Ecology publication 07-02-021).¹¹⁸ According to the EPA's Greenhouse Gas Inventories Searchable Table, a diverse group of at least 33 states use the SIT data for similar purposes.¹¹⁹ Many state and local governments also routinely access FLIGHT data collected under the GHGRP to develop and

¹¹⁶ *FLIGHT*, *supra* n.56.

¹¹⁷ *Enviro Facts*, U.S. ENV'T PROT. AGENCY, <https://enviro.epa.gov>, [<https://perma.cc/HKC3-8PPL>] (last visited November 2, 2025).

¹¹⁸ 1990 BASELINE REPORT, *supra* n. 44.

¹¹⁹ *GHG Inventories Searchable Table*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/inflation-reduction-act/ghg-inventories-searchable-table>, (last visited November 2, 2025), [<https://perma.cc/UWP5-4K6V>] (last visited November 2, 2025).

refine their GHG inventories, perform quality control on state-level emissions reports, and to assess usefulness and potential gaps in the methodologies being leveraged and the data being collected. And most U.S. states utilize the SIT and/or FLIGHT to produce part, if not all, of their annual greenhouse gas inventories, which provide a foundation for state and local governments to understand the scope and trends of greenhouse gas emissions in their jurisdiction.

The loss of access to this data and these tools for state emissions tracking and policy development is significant. It will impact many States' abilities to parse and leverage data necessary to develop their statewide GHG inventories, track progress toward sector and statewide goals, and arm policymakers and other stakeholders with relevant, timely, and accurate GHG emissions data and context. In its place, States will be forced to abruptly invest in new data infrastructure and electronic tools, and the regulated community will need to invest in adapting to each multiple, separate systems developed in various states. Finally, the States may face inconsistent, incomplete, and inaccurate data collection as each will have to learn and incorporate new or interim reporting and tracking system, including spending time and resources to determine the best system to use. This will disrupt the States' ability to track progress in GHG emissions reductions efforts at a critical time as they evaluate the effectiveness of recent policies and assess the need for new policy measures to address additional sectors or source categories. Moreover, many States rely on the GHGRP and SIT tool to develop their own state inventory which in turn is relied on to evaluate accomplishment of statutory GHG reduction requirements.

These data infrastructure headwinds come at a pivotal time for many state climate programs, which are rolling out new programs and face key emissions reductions milestones in the near and intermediate-term future. For example, the 2025 emissions data, which is due to be reported in 2026, is critical to assessing Colorado's first emissions reduction milestone year.¹²⁰ Similarly, Washington State is in its first four-year compliance period of its Cap and Invest Program which relies on facility-level GHG reporting using EPA methods and e-GGRT.¹²¹ Washington is also approaching its 2030 statutory milestone requiring the state to limit GHG pollution to 45 percent below 1990 levels.¹²² EPA entirely fails to acknowledge these state policy goals, which reflect the will of the residents of those states, and the ways in which its elimination of the GHGRP and associated tools will directly frustrate those state efforts.

2. EPA fails to address significant reliance interests of other federal agencies and Congress

Like its treatment of state reliance interests, EPA makes only passing reference to the significant reliance interests of other federal agencies and Congress on the GHGRP, but does nothing to analyze and weigh those interests or even acknowledge specifically all the many ways other federal agencies and Congress rely on the GHGRP.

¹²⁰ COLO. REV. STAT. § 25-7-102(2)(g)(I) (setting statewide GHG reduction goals, including goal for the first milestone year of 26% reduction by 2025).

¹²¹ WA. ADMIN. CODE § 70A.65.070.

¹²² WA. ADMIN. CODE § 70A.45.020(1)(a)(ii).

EPA uses the data to prepare its annual *U.S. Inventory of Greenhouse Gas Emissions and Sinks* report.¹²³ The report is submitted to the UN as required, pursuant to the UNFCCC, which the United States signed and the Senate ratified in 1992, and which underpins several agreements under the UNFCCC including the Paris agreement.¹²⁴ This report provides the most authoritative and comprehensive information on GHG emissions in the United States and is widely referenced by numerous federal agencies and Congress in the development of federal policies related to GHGs and climate change. The Council on Environmental Quality (CEQ) issues guidance for federal agencies on considering GHG emissions under the National Environmental Policy Act (NEPA), which is informed by EPA's data and methodologies.¹²⁵ And the Treasury Department and IRS use the annual data to produce regulations governing tax credits for carbon dioxide sequestration and clean hydrogen production.¹²⁶ See *infra* Argument III.C.2.a.

Federal agencies use the EPA data directly for reporting and analysis, including facility reports and national inventories to inform their own analyses, reports, and policy recommendations. Agencies also use EPA data and tools from the GHGRP to help them understand and address emissions, and to provide guidance to other stakeholders. Also, federal agencies often use EPA data as a primary source and cross-reference it with their own datasets and other agency data for a comprehensive view of energy and environmental trends, thus relying on the EPA data to confirm and contextualize data they collect.

Congress has also distributed significant funds to states to address climate change through substantial federal grants that rely on the GHGRP as a key resource that states must use to complete the required work addressing GHG emissions, such as, EPA's Climate Pollution Reduction Grant (CRPG) under the IRA.¹²⁷ See *supra*, Argument Section III.B.1. Further, the Congressional Research Service prepares reports on GHG trends using EPA's GHG Inventory Data derived in large part from GHGRP data.¹²⁸ The data is also used by the Congressional Budget Office to analyze emissions, particularly in the manufacturing sector.¹²⁹ EPA fails to recognize and weigh the significant qualitative loss that will be realized across the federal government by abandoning the data collection effort at this point. Without ongoing collection by the GHGRP, the federal government itself will be left with significant gaps and incongruities in

¹²³ *GHGRP and the U.S. Inventory of Greenhouse Gas Emissions and Sinks*, *supra* n.18.

¹²⁴ GHGRP CRS Report, *supra* n. 5; UN Reporting Requirements, *supra* n.5.

¹²⁵ National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1,196 (Jan. 9, 2023).

¹²⁶ 90 Fed. Reg. at 44,598-99, 44,603; 90 Fed. Reg. 2,224; See also *supra* n.25.

¹²⁷ *Climate Pollution Reduction Grants Program: Formula Grants for Planning*, U.S. ENV'T PROT. AGENCY, at 50 (Mar. 1, 2023), <https://www.epa.gov/system/files/documents/2023-2/EPA%20CPRG%20Planning%20Grants%20Program%20Guidance%20for%20States-Municipalities-Air%20Agencies%2003-01-2023.pdf> [<https://perma.cc/8UJJ-B7EK>].

¹²⁸ Jonathan L. Ramseur, *U.S. Greenhouse Gas Emissions Trends and Projections from the Inflation Reduction Act*, R47385, CONG. RSCH. SERV. (Jan. 12, 2023), https://www.congress.gov/crs_external_products/R/PDF/R47385/R47385.2.pdf.

¹²⁹ *Emissions of Greenhouse Gases in the Manufacturing Sector*, CONG. BUDGET OFFICE (Feb. 2024), <https://www.cbo.gov/publication/60030>.

the remaining data in lieu of the uniquely valuable national dataset that has been collected under the Program.

3. EPA fails to address significant reliance interests of businesses

EPA fails to acknowledge the extent to which business interests rely on the GHGRP. Businesses rely on data from the program for internal reporting, managing risk, attracting investment, and in some cases to access key markets. *See supra*, Background Section II.E. For example, businesses rely on this data for their annual sustainability reports, as well as to demonstrate environmental progress to shareholders and to meet international reporting requirements.¹³⁰ Businesses use the data to manage risk in their operations and supply chains as well. Losing data or having inconsistent data may create uncertainty that affects purchasing and acquisition decisions and increases the risk of disruption. The loss of GHGRP data could increase insurance rates as insurers hedge against losses. When those losses happen, the firm may also incur costs of lost sales or costs of alternative sourcing. In addition, emissions data is critical for investors to make accurate and efficient market decisions, and the GHGRP is the primary national source for such information.

Insurers in real estate and housing markets rely on GHGRP data as well to assess risk.¹³¹ Loss of the GHGRP will impact insurance companies as well as businesses throughout this industry. Also, industries like carbon management rely directly on the GHGRP for domestic tax credits like those for clean hydrogen (45V)¹³² and carbon capture (45Q).¹³³ These businesses have pointed to the GHGRP as the “regulatory backbone ensuring the integrity, transparency, and accountability.”¹³⁴

Businesses exporting products to European markets may also rely upon GHGRP’s reputability to demonstrate compliance with international export laws like the European Union’s Methane Regulation¹³⁵ and Carbon Border Adjustment Mechanism (CBAM) to ensure access to European markets.¹³⁶ For example, oil and gas operators have a significant competitive advantage that results from the transparent and consistent reporting opportunities provided by GHGRP. These businesses are able to sell their products nationally and internationally at higher prices due to the

¹³⁰ Peter C. Trimarchi, et al., *EPA Reconsiders Greenhouse Gas Reporting Program*, WHITE & CASE (Oct. 9, 2025), <https://www.whitecase.com/insight-alert/epa-reconsiders-greenhouse-gas-reporting-program>; *Trump EPA Proposal Would Eliminate Greenhouse Gas Emissions Reporting Program*, EDF (Sept. 12, 2025), <https://www.edf.org/media/trump-epa-proposal-would-eliminate-greenhouse-gas-reporting-program>.

¹³¹ Benjamin J. Keys, *Housing, Climate Risk, and Insurance*, NAT’L BUREAU ECON. RSCH. (June 16, 2025), <https://www.nber.org/reporter/2025number2/housing-climate-risk-and-insurance?page=1&perPage=50>.

¹³² Credit for Production of Clean Hydrogen and Energy Credit, 26 C.F.R. Pt. 1, (Jan. 10, 2025).

¹³³ 90 Fed. Reg. 2,224; Section 45Q Tax Credit CRS Report, *supra* n.25.

¹³⁴ *EPA’s Greenhouse Gas Reporting Program is the Foundation for Long-Term Success of Carbon Storage*, CARBON CAPTURE COALITION (June 27, 2025), <https://carboncapturecoalition.org/epas-greenhouse-gas-reporting-program-is-the-foundation-for-long-term-success-of-carbon-storage/>.

¹³⁵ Commission Regulation 2024/1787 of June 13, 2024, On the Reduction of Methane Emissions in the Energy Sector and Amending Regulation (EU) 2019/942, 2024 O.J. (L 1787), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL_202401787.

¹³⁶ Establishing a Carbon Border Adjustment Mechanism, 2023/956 (June 6, 2024).

verification offered by GHGRP as to the emissions profile of the product(s). This benefits both the operators and the oil and gas producing states where these businesses are located throughout the country.

C. EPA's assessment of costs and benefits is woefully inadequate

EPA's Proposal is also arbitrary and capricious because its assessment of its impacts ignores and gives spurious treatment to the GHGRP's previously acknowledged substantial benefits and overstates the cost savings associated with repealing the reporting requirements. *See Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011); *Pub. Citizen, Inc. v. Mineta*, 340 F.3d 39, 58 (2d Cir. 2003); *Sierra Club v. Sigler*, 695 F.2d 957, 979 (5th Cir. 1983); *Getty v. Fed. Savs. & Loan Ins. Corp.*, 805 F.2d 1050, 1055, 1057 (D.C. Cir. 1986); *Sierra Club v. U.S. Dep't of Interior*, 899 F.3d 260, 293 (4th Cir. 2018). The Proposal therefore fails to consider important aspects of the problem and to address prior contradictory findings. *See State Farm*, 463 U.S. at 43–46. The Supreme Court reaffirmed in *Michigan v. EPA*, 576 U.S. 743, 753 (2015), that “reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions.” Further, the fact that something is uncertain—which any effort to project into the future or monetize harms and benefits necessarily is—does not exempt an agency from the obligations to consider relevant factors and reach reasonable conclusions. *Pub. Citizen v. Fed. Motor Carrier Safety Admin.*, 374 F.3d at 1219; *Montana Wilderness Ass'n*, 666 F.3d at 559.

Citing *Michigan v. EPA*, 576 US 743, EPA asserts it must “take the cost of information collection and reporting into account when taking action.” 90 Fed. Reg. at 44,596. However, EPA's consideration of costs must therefore also account for associated benefits. EPA “cannot put a thumb on the scale by undervaluing the benefits and overvaluing the costs” of the GHGRP. *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1198 (9th Cir. 2008). Here, EPA's assessment of the Proposal benefits fails to address important aspects of the problem in two broad ways. First, it ignores the significant benefits to keeping the GHGRP. Second, it overstates the cost savings associated with the Proposal.

1. EPA fails to consider the substantial benefits of keeping the GHGRP

EPA's failure to adequately consider the significant benefits of maintaining the GHGRP renders the Proposal arbitrary and capricious. When EPA established the GHGRP in 2009, it described the benefits as being “based on their relevance to policy making, transparency issues, and market efficiency.” 74 Fed. Reg. at 56,368. EPA acknowledged the difficulty in quantifying and monetizing the benefits of the reporting program, but it nevertheless concluded that the benefits “are substantial and outweigh the estimated costs.” 74 Fed. Reg. at 56,369. To the extent that EPA's Proposal is based on determinations of the GHGRP's benefits that contradict those underlying the agency's prior policy, the agency must provide a more detailed explanation for its policy change. *See Fox*, 556 U.S. at 515–16.

When it established the GHGRP in 2009, EPA explained that “[t]he greatest benefit of mandatory reporting of industry GHG emissions to government will be realized in developing future GHG policies.” 74 Fed. Reg. at 56,368. Specifically, the GHGRP provides “policy makers and analysts with a data set that is comprehensive and reduces the potential for policy bias due to non-reporting by certain sectors.”¹³⁷ In appropriating \$3.5 million for EPA to develop a mandatory GHG emission reporting rule, Congress plainly recognized that this data had value to inform EPA’s regulatory actions, and Congress acknowledged that value again when it appropriated an additional \$6.5 million for EPA to develop and implement the GHGRP in 2009.

Indeed, EPA has used GHGRP data to inform the development of new source performance standards and emission guidelines for oil and natural gas facilities, municipal solid waste landfills, and fossil-fuel fired electricity generating units. 90 Fed. Reg. at 44,598; *see also, e.g.*, 89 Fed. Reg. 39,798, 39,812 (referencing GHGRP data showing that fossil fuel-fired EGUs were 85 of the top 100 stationary source emitters of GHGs in 2022). Other sectors that have not been prioritized for regulation have saved money by not having to take steps to control their emissions because the reporting data demonstrates that regulating them should not be EPA’s first priority. Additionally, as explained in Argument Section III.B, many states and cities rely on the GHGRP to inform their own policy making and to carry out existing policies relating to GHG emissions. EPA cannot now simply ignore the significant benefits of the GHGRP and its robust dataset to its ongoing regulatory activities and to the activities of other regulatory bodies and policy makers.

In addition to its benefits to policy makers and regulatory bodies, the GHGRP benefits the public by increasing transparency of facility-level emissions data. “Transparent, public data on emissions allows for accountability of polluters to the public stakeholders who bear the cost of the pollution.” 74 Fed. Reg. at 56,368. Specifically, EPA recognized that “[c]itizens, community groups, and labor unions have made use of data from Pollutant Release and Transfer Registers to negotiate directly with polluters to lower emissions, circumventing greater government regulation.”¹³⁸ 74 Fed. Reg. at 56,368. Additionally, “[p]ublicly available emissions data also will allow individuals to alter their consumption habits based on the GHG emissions of producers.” 74 Fed. Reg. at 56,368. If EPA no longer considers transparent, public data to be beneficial to the public, then it has not adequately explained why it has changed its position.

¹³⁷ Commission Regulation 2023/956 of June 6, 2024, Establishing a Carbon Border Adjustment Mechanism 2023 O.J. (L 130), <https://eur-lex.europa.eu/eli/reg/2023/956/oj/eng>.

¹³⁸ *See also How Are the Toxics Release Inventory Data Used?—Government, Business, Academic and Citizen Uses*, U.S. ENV’T PROT. AGENCY, at 2-8 (EPA-2600-R-002-004), <https://nepis.epa.gov/Exe/ZyNET.exe/900B0100.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2000+Thru+2005&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C00thru05%5CTxt%5C00000011%5C900B0100.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL>, EPA-260-R-002-004 (May 2003); *Greenhouse Gas Reporting and Disclosure: Key Elements of a Perspective U.S. Program*, PEW CENTER ON GLOBAL CLIMATE CHANGE, at 7 (2008), https://www.c2es.org/wp-content/uploads/2002/03/policy_inbrief_ghg.pdf.

EPA also mistakenly concludes that repealing the GHGRP’s reporting requirements will not result in “emission changes or monetized changes in benefits from emissions” because there are no specific emission reduction requirements in the rule. 90 Fed. Reg. at 44,603. This conclusion is faulty because, although the GHGRP itself does not mandate GHG emissions reductions, its purpose is to inform EPA and others and facilitate those reductions. The GHGRP provides data to inform EPA’s regulatory activities under the Clean Air Act, and EPA has used this data for setting new source performance standards and emission guidelines, which will result in reduced GHG emissions, and—importantly—for assessing the costs and benefits of regulatory alternatives.¹³⁹ These standards illustrate how GHGRP data directly contributes to regulatory action that reduces GHG emissions to society’s net benefit. For instance, when it amended new source performance standards for GHG emissions for the oil and natural gas source category in 2016, EPA estimated the standards would result in emissions reductions of 510,000 tons of methane; 210,000 tons of volatile organic compounds; and 3,900 tons of hazardous air pollutants by 2025. 81 Fed. Reg. 35,824, 35,827. EPA estimated the monetized benefits of methane reductions under these standards to be \$360 million in 2020 and \$690 million in 2025. *Id.* Also in 2016, EPA estimated that its new source performance standards for municipal solid waste landfills would result in reductions in methane emissions of 44,3000 Mg/yr beyond 2025, which would result in estimated global climate benefits of \$31 million to \$180 million. 81 Fed. Reg. 59,332, 59,335. Furthermore, EPA previously acknowledged that the transparent, public data of the GHGRP can facilitate emissions reductions through voluntary emissions reductions by industrial sources and through actions by public stakeholders who can negotiate directly with polluters to reduce their emissions. 74 Fed. Reg. at 56,368.¹⁴⁰ Indeed, studies show that reporting under the GHGRP has led to voluntary emissions reductions, even in the absence of additional regulation.¹⁴¹ Thus, EPA’s assumption that the Proposal will not result in emissions changes directly contradicts the agency’s prior position, runs counter to its prior findings, and is inadequately explained.

EPA also previously identified several ways in which the GHGRP would benefit industry. Such benefits “include the identification of cost-effective GHG reduction opportunities and disclosure that provides firms with incentives to reduce emissions voluntarily,” and the GHGRP also

¹³⁹ See e.g., *Regulatory Impact Analysis for the Proposed New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule*, EPA-452/R-23-006, U.S. ENV’T PROT. AGENCY (May 2023), https://www.epa.gov/system/files/documents/2023-12/eo12866_oil-and-gas-nsps-eg-climate-review-2060-av16-ria-20231130.pdf.

¹⁴⁰ See also EPA, “Regulatory Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions Final Rule,” at 6-3 to 6-5 (Sept. 2009), <https://www.epa.gov/sites/default/files/2015-07/documents/regulatoryimpactanalysisghg.pdf>.

¹⁴¹ See Sorabh Tomar, *Greenhouse Gas Disclosure and Emissions Benchmarking*, 61 J. Accounting Research 451, 451-52 (2023), <https://ideas.repec.org/a/bla/joares/v61y2023i2p451-492.html>; Bauckloh et al., *Under Pressure? The Link Between Mandatory Climate Reporting and Firms’ Carbon Performance*, 36 Org. & Env’t: J. of Bus. Sustainability 126 (2022) <https://journals.sagepub.com/doi/epub/10.1177/10860266221083340>; Yang et al., *The Real Effects of Mandatory CSR Disclosure on Emissions: Evidence from the Greenhouse Gas Reporting Program*, 28984 Nat’l Bur. Econ. Res. 1, 3, 17 (July 2021), https://www.nber.org/system/files/working_papers/w28984/w28984.pdf.

“provides emissions data to service industries, such as insurance and financial markets.”¹⁴² Additionally, the GHGRP provides industrial sources with verifiable data to demonstrate their environmental stewardship to the public.¹⁴³

EPA presently acknowledges many of the above-mentioned benefits but asserts that “the magnitude of these impacts or the response by non-EPA parties to adapt to these changes is too uncertain to quantify.” 90 Fed. Reg. at 44,603. EPA cannot simply ignore the myriad benefits of the GHGRP because those benefits are difficult to quantify. In *Center for Biological Diversity v. NHTSA*, the Ninth Circuit held that NHTSA had acted arbitrarily and capriciously when it established vehicle efficiency standards without monetizing the benefits of GHG emissions reductions. 538 F.3d at 1198–1203. The court rejected NHTSA’s argument that the value of reducing GHG emissions was “too uncertain” to quantify: “while the record shows that there is a range of values, the value of carbon emissions reduction is certainly not zero.” *Id.* at 1200. Similarly, even though the many benefits of the GHGRP may be difficult to quantify, they are certainly not zero. At a minimum, EPA must give some weight to the GHGRP’s many benefits in either a quantitative or qualitative form.

2. EPA overstates the cost savings for rescinding the GHGRP reporting requirements

EPA significantly overstates the cost savings associated with the Proposal. EPA only quantifies cost savings to industrial sources and it overlooks several new costs that would be imposed by the Proposal, if finalized. First, EPA ignores the costs to itself and other federal agencies in carrying out their regulatory activities using alternate sources of data. Second, EPA ignores the significant costs that would be incurred by states in replacing various aspects of the GHGRP, and it overstates costs savings to industrial facilities that are still subject to state reporting requirements. Last, to the extent that the Proposal is justified by EPA’s stated intent to forgo further regulation of GHG emissions, the agency must quantify and monetize the impacts of those lost GHG emissions reductions.

a. The Proposal imposes new costs on federal agencies

EPA fails to quantify its potential costs in using targeted information collection requests to obtain information currently collected under the GHGRP. In asserting that it does not need the GHGRP to inform its future regulatory activities, EPA claims that it can instead obtain necessary emissions data through information collection requests under Clean Air Act section 114. 90 Fed. Reg. at 44,597. To accurately assess the cost savings associated with the Proposal, however, EPA must account for the added costs incurred by obtaining necessary emissions data through alternate means such as targeted information collection requests.

¹⁴² *Regulatory Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions Final Rule (GHG Reporting)*, U.S. ENV’T PROT. AGENCY, at 6-1 (Sept. 2009), <https://www.epa.gov/sites/default/files/2015-07/documents/regulatoryimpactanalysisghg.pdf>.

¹⁴³ *Id.* at 6-5.

The GHGRP also provides significant benefits to other federal agencies and EPA has made no effort to quantify the Proposal's costs to those agencies. GHGRP data relating to the petroleum and natural gas systems source categories, in particular, is used by federal agencies for their own regulatory purposes. The Treasury Department and the IRS refer to GHGRP requirements for facilities engaged in sequestering CO₂ for underground storage in regulations under section 45Q of the Internal Revenue Code regarding taxpayer credit for carbon dioxide sequestration. 90 Fed. Reg. at 44,598-99, 44,603. Additionally, "the Treasury Department and the IRS also refer to the subpart W regulation in the preamble of the final regulations under section 45V of the IRC, the credit for clean hydrogen production (90 FR 2224, January 10, 2025)." 90 Fed. Reg. at 44,602. EPA also acknowledges that "[t]he Treasury Department and the IRS have also requested comment on whether data reported under subpart PP of Part 98 (Suppliers of Carbon Dioxide) could be used to substantiate carbon capture amounts." 90 Fed. Reg. at 44,603.

b. *The Proposal imposes new costs on many states*

EPA also fails to account for costs to states under the Proposal. It generally acknowledges potential impacts to approximately 20 states that have GHG reporting programs: "The EPA is aware that approximately 20 states implement state-level greenhouse gas reporting that, in some cases, incorporate 40 C.F.R. part 98 by reference and/or rely on data collected by and exported from EPA's electronic Greenhouse Gas Reporting Tool (e-GGRT) or other GHGRP-related EPA electronic resources." 90 Fed. Reg. at 44,605. EPA further acknowledges that "[s]ignificant alteration or removal of these resources may impact the abilities of states to implement their respective clean air programs and regulations." *Id.* EPA now dismisses these impacts, asserting that they "could be mitigated through the adjustment and/or de-coupling of relevant state regulations from the EPA's and/or the development of EPA-independent state tools to address any state-specific greenhouse gas data collection needs." *Id.* However, EPA failed to adequately consider costs of this rollback to some states. States currently reliant on e-GGRT as a reporting platform will very likely need to develop their own methods and collection procedures as well as electronic platforms, which also typically require engaging in lengthy rulemakings.

As explained in Argument Section III.B above, many cities and states use the GHGRP as the foundation for their own policy development and for regulation and tracking of GHGs under their own programs. They rely on the GHGRP as a source of GHG emissions calculation methods as well as for its electronic reporting infrastructure and for developing their own GHG inventories. These cities and states may incur significant costs replicating the methods and collection procedures and platforms that the GHGRP now provides. For example, Washington estimates its costs to develop its own reporting platform similar to EPA e-GGRT will be \$750,000 for the first year, \$1.5 million for the next year, \$750,000 in third year, and then \$250,000 for each subsequent year for maintenance of the reporting platform on an ongoing basis. Similarly, Colorado estimates its costs to develop its own reporting platform to be about \$2,500,000 with recurring annual maintenance costs of about \$250,000.

EPA failed to adequately consider costs of this rollback to states, who will now have to backfill with their own methods and collection procedures and electronic platforms incurring significant

costs. EPA thus disregarded or (at best) misapprehended the harms of its actions and failed to consider a central aspect of the problem before it. *See State Farm*, 463 U.S. at 41; *City of Portland v. EPA*, 507 F.3d 706, 713 (D.C. Cir. 2007) (courts “will [not] tolerate rules based on arbitrary and capricious cost-benefit analyses”).

c. *The Proposal overstates costs savings to industrial facilities subject to state reporting requirements*

Furthermore, costs savings to industry are overstated because many facilities will still be subject to state reporting requirements. For instance, Washington’s reporting program largely incorporates by reference the GHGRP requirements as of a date certain. *See* Wash. Admin. Code. § 173-441-020. Washington’s GHG reporting program relies on reporters to first report to EPA in e-GGRT and then export information from that and supply it to the Washington State Department of Ecology with certain supplemental information. *See supra*, Background Section II.D.2. Under the Proposal, facilities located in Washington would no longer have to report emissions to EPA, but they would still have state reporting obligations. EPA’s proposed cost savings would therefore not be realized for these or similarly situated facilities.

Industry may actually bear *higher* reporting costs, as various states “de-coupl[e] [their] relevant state regulations from the EPA’s and/or [develop] EPA-independent state tools to address any state-specific GHG data collection needs.” 90 Fed. Reg. at 44,605. This is because, as EPA previously recognized, the GHGRP provides benefits to industry through the standardization of reporting systems: “Once industrial facilities invest in the institutional knowledge and systems to report emissions, the cost of monitoring should fall and the accuracy of the accounting should improve.”¹⁴⁴ The benefits would not be realized if states are forced to develop their own, distinct reporting systems and tools, and industry is subject to multiple reporting standards across the nation.

D. EPA failed to adequately consider alternatives

EPA’s Proposal fails to consider a number of key alternatives and provides no more than conclusory dismissals of the alternatives it does identify. This falls below the standard required for reasoned consideration of alternatives to the proposed action. “To be regarded as rational, an agency must . . . consider significant alternatives to the course it ultimately chooses.” *Allied Local & Reg’l Mfrs. Caucus v. EPA*, 215 F.3d 61, 80 (D.C. Cir. 2000).

A rulemaking to change an existing program or set of standards must include, within its scope of analysis, “alternative[s] within the ambit of the existing standards.” *State Farm*, 463 U.S. at 51. Ambit means “a sphere of action, expression, or influence: scope.”¹⁴⁵ In other words, the rulemaking must consider options between the existing GHGRP and full repeal. An agency is required to consider alternatives to its chosen policy and to give a reasoned explanation for its

¹⁴⁴ *Id.* at 6-5.

¹⁴⁵ *Ambit*, Webster’s New Collegiate Dictionary (1981); *see also* Oxford English Dictionary (1989) (defining “ambit” as the “the extent, compass, sphere, of actions, words, thoughts, etc.”).

rejection of such alternatives.” *Spirit Airlines v. U.S. Dep’t of Transp.*, 997 F.3d 1247, 1255 (D.C. Cir. 2021) (quoting *Am. Radio Relay League v. FCC*, 524 F.3d 227, 241 (D.C. Cir. 2008)).

Courts have found agency actions arbitrary and capricious when the agency “fail[ed] . . . to consider obvious alternatives.” *Yakima Valley Cablevision v. FCC*, 794 F.2d 737, 746 n.36 (D.C. Cir. 1986). And while an agency need not consider “every alternative,” *State Farm*, 463 U.S. at 51, it must consider “significant and viable . . . alternatives,” *10 Ring Precision v. Jones*, 722 F.3d 711, 724 (5th Cir. 2013). Indeed, it is blackletter law that an agency should consider alternatives short of full repeal. *State Farm*, 463 U.S. at 51; *see also Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (agency’s rescission of rule is arbitrary and capricious without considering whether agency should maintain key component of rule that could operate independently). Here, the Proposal fails to adequately consider alternatives in at least two key respects.

1. EPA’s Proposal fails to identify obvious alternatives

First, EPA should have identified and thoroughly explored the merits of a number of obvious alternatives to the proposed rescission action. For example, rather than completely rescinding reporting requirements for all reporters, EPA should have considered changing the reporting threshold from 25,000 MT GHG to a different threshold, thereby still requiring reporting for the largest emitters. This could reduce the economic cost burden of reporting for smaller emitters, but maintain many of the wide-ranging informational benefits of the program, albeit with reduced coverage of the overall emissions picture. In addition, EPA should have considered maintaining reporting requirements for particular reporting categories even if it found some reporting categories where it believed that rescinding the reporting requirement was prudent. EPA also should have explored ways to streamline the reporting process to reduce burdens through improved electronic tools and other measures, while maintaining high quality information. All of these options fall within the ambit of the rule and would help EPA achieve its stated objectives in the Proposal to reduce regulatory burdens on reporters. The Proposal, however, fails to identify and describe these obvious options with specificity, let alone analyze them in detail and explain why they should not be selected.

Moreover, given the extensive reliance interests that the GHGRP has engendered, particularly by state and local mandatory GHG programs that incorporate EPA reporting methods by reference and rely on the e-GGRT data collection platform, EPA should have considered the alternative of delaying the effective date of this proposed action by two years or more. This would provide lead time for state and local GHG reporting programs to conduct their own rulemakings to adjust their incorporation by reference of EPA methods and develop their own electronic reporting platforms.

Without adequate lead time, EPA’s abrupt action to rescind its program will directly disrupt state and local GHG reporting programs. EPA could have proposed to minimize federal reporting obligations while making transparent and consistent reporting opportunities continually available for those who choose to do so. Many state GHG reporting programs currently incorporate EPA’s reporting methods and procedures by reference, and the rescinding of those rules will, in some

cases, directly disrupt the operation of those programs. *See supra*, Background Section II.D and Argument Section III.B. For example, Massachusetts’s GHG reporting program requires all stationary sources to report emissions if the EPA’s GHG reporting program regulations in 40 C.F.R. Part 98 provide methods for quantifying the source’s emissions.¹⁴⁶ If those methods are rescinded, regulated entities in Massachusetts will face uncertainty regarding how to comply with the Commonwealth’s reporting requirements. Other state programs including programs in Colorado,¹⁴⁷ Hawai‘i,¹⁴⁸ and Washington,¹⁴⁹ as well as New York State’s proposed reporting program,¹⁵⁰ incorporate the emission calculation methods in 40 C.F.R. part 98 by reference and will require time to adjust their regulations as needed as well. Additionally state programs, such as those in Colorado and Washington, rely on EPA’s electronic GHG reporting tool known as “e-GGRT” as a key aspect of their electronic reporting infrastructure and process.¹⁵¹ Discontinuation of e-GGRT will disrupt the information collection procedure employed by these state programs, and create confusion and increased costs for state-required GHG reporters. Again, significant lead time is required to allow states to complete any necessary rulemakings to amend their program rules and develop alternative electronic reporting platforms. EPA should therefore consider an alternative of delaying the effective date of a final rule to rescind the calculation methods subsections from 40 C.F.R Part 98 and discontinue e-GGRT for at least two years.

These alternatives all fall within the ambit of the proposed rule dealing with how to balance the burdens and benefits of GHG emissions information collection. These alternatives are also “significant and viable,” and therefore should be identified, analyzed, and thoroughly considered as part of EPA’s decision-making process. *10 Ring Precision*, 722 F.3d at 724. EPA’s failure to consider these obvious alternatives renders the Proposal, if adopted, arbitrary and capricious. *Yakima Valley Cablevision, Inc. v. FCC*, 794 F.2d 737, 746 n.36 (D.C. Cir. 1986) (collecting cases and noting “[t]he failure of an agency to consider obvious alternatives has led uniformly to reversal”). EPA should therefore repropose this action and identify these kinds of additional obvious alternatives, and present its rationales for adopting or not adopting them. EPA must do this in a second Proposed rule in order to make the entire basis for its analysis available for public comment. *Conn. Light & Power v. NRC*, 673 F.2d 525, 530–31 (D.C. Cir. 1982); *see also* 42 U.S.C. § 7607(d)(3). (An agency must “identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules,” and failure to “reveal

¹⁴⁶ 310 CODE. MASS. REGS. § 7.71(2).

¹⁴⁷ *E.g.*, 5 COLO. ADMIN. CODE § 1001-26 (incorporating by reference 40 C.F.R. Part 98 (effective January 1, 2025)).

¹⁴⁸ HAW. ADMIN. RULES §11-60.1-115(b).

¹⁴⁹ WA. ADMIN. CODE §§ 173-441-050(2), 173-441-120.

¹⁵⁰ N.Y. State Dept. Conservation: Recently Proposed and Adopted Regulations and Policies, 6 NYCRR Part 253 *Mandatory Greenhouse Gas Reporting*, <https://dec.ny.gov/regulatory/regulations/proposed-emergency-recently-adopted-regulations/air-pollution-regulatory-revisions>. (last visited Oct. 21, 2025).

¹⁵¹ *Greenhouse Gas Reporting*, COLO. DEPT. PUB. HEALTH & ENV’T (last visited Oct. 21, 2025), <https://cdphe.colorado.gov/climate-change/greenhouse-gas-reporting#greenhousegasreportingportal>; *Mandatory Greenhouse Gas Reports*, WASH. DEP’T ECOLOGY, <https://ecology.wa.gov/air-climate/reducing-greenhouse-gas-emissions/tracking-greenhouse-gases/mandatory-greenhouse-gas-reports>.

portions of the technical basis for a proposed rule in time to allow for meaningful commentary” constitutes “serious procedural error.”).

2. EPA fails to adequately consider the limited alternatives it does identify

Second, EPA’s conclusory dismissal of a limited subset of obvious alternatives, without more, fails to adequately consider even those identified alternatives. EPA’s discussion of these alternatives in its Proposal is contained in a single paragraph and fails to provide a description or rationale for why it dismisses these alternatives, let alone any supporting documentation or analysis. 90 Fed. Reg. at 44,598. This failure to provide supporting discussion or analysis of the pros and cons compared to the proposed action is fatal to its alternative analysis. Without a minimum level of discussion and analysis, conclusory assertions that the alternatives lack merit are insufficient under the APA. “An agency is required to consider alternatives to its chosen policy and to give a *reasoned explanation* for its rejection of such alternatives.” *Spirit Airlines*, 997 F.3d at 1255 (emphasis added) (quoting *Am. Radio Relay League v. FCC*, 524 F.3d 227, 241 (D.C. Cir. 2008)). “To be regarded as rational, an agency must . . . consider significant alternatives to the course it ultimately chooses.” *Allied Local & Reg’l Mfrs. Caucus v. EPA*, 215 F.3d 61, 80 (D.C. Cir. 2000).

Here, EPA’s Proposal references—but provides only conclusory discussion of—a few potential alternatives, such as retaining reporting for particular source categories, exploring opportunities for reducing the burden of reporting for any retained source categories by reducing the frequency of reporting, removing or streamlining specific data requirements, or removing small emission sources from the program. 90 Fed. Reg. at 44,598. But EPA does not grapple individually with any of these alternatives, and simply discards them in a one sentence explanation, stating that “maintaining continuous or intermittent reporting under any of these source categories is inconsistent with [Clean Air Act] section 114 or appropriately could be addressed through collection from other sources.” 90 Fed. Reg. at 44,598. Here, EPA’s first rationale simply restates its primary basis for rescinding the GHGRP under its theory that it lacks authority for the program under section 114 of the Clean Air Act. But this has no bearing on EPA’s second discretionary basis for the Proposal, leaving only the rationale that there are supposedly alternative sources for the data—an assertion that belies the extensive comparative limitations of alternative data sources as described above in Argument Section III.A.2. Further, EPA fails to identify or quantify the extent to which these identified alternatives could reduce costs imposed by the GHGRP on reporters or to consider the benefits of these alternatives and compare those to the costs, including benefits to state and local governments that rely on the GHGRP. This falls far short of providing a reasoned explanation. *Spirit Airlines*, 997 F.3d at 1255.

EPA also asserts that it considered the alternative of “transitioning the GHGRP from mandatory to voluntary reporting.” 90 Fed. Reg. at 44,598. But here EPA’s “consideration” consists of one sentence stating that “a voluntary reporting program could also result in submittal of incomplete or piecemeal reports, and the verification and accuracy of the data submitted would be limited.” 90 Fed. Reg. at 44,598. Again, this is insufficient, as it fails to provide supporting information, analysis, or to acknowledge the benefits of such an approach compared to the Proposal. In fact, a

voluntary reporting program offers important benefits to many business and industry reporters who increasingly need a reliable and consistent way to report their emissions in order to maintain access to key markets with GHG reporting requirements, to report to shareholders, to identify any opportunities for cost-saving efficiency improvements and technological advancements, all necessary to maintain the competitiveness of American business. Failing to grapple with these benefits of viable alternatives, and subject that analysis to public comment, renders the Proposal arbitrary and capricious. *State Farm*, 463 U.S. at 51; *Spirit Airlines*, 997 F.3d at 1255; *Conn. Light & Power v. NRC*, 673 F.2d 525, 530–31 (D.C. Cir. 1982); *see also* 42 U.S.C. § 7607(d)(3).

E. The Proposal is prejudged and its rationale is pretextual

1. EPA Administrator Zeldin has prejudged the outcome of the proposed GHG Reporting Rule rescission

Administrator Zeldin has demonstrated an “unalterably closed mind on matters critical to the disposition of th[is] proceeding,” and therefore EPA must withdraw this current Proposal and begin a new rulemaking process untainted by the Administrator’s prejudgment. *Ass’n of Nat’l Advertisers, Inc. v. F.T.C.*, 627 F.2d 1151, 1170 (D.C. Cir. 1979); *Nehemiah Corp. of Am. v. Jackson*, 546 F. Supp. 2d 830, 847 (E.D. Cal 2008) (describing the appropriate remedies when an agency official has prejudged the outcome of a particular matter). He is halting the collection of critical data in order to support his deregulatory efforts and prevent EPA from regulating greenhouse gases in the future because he believes climate change is a “religion.” But he is wrong. Sticking his head in the sand will not make climate change go away; it will only make the United States unprepared to address it.

A showing of prejudgment requires more than “mere discussion of policy or advocacy on a legal question.” *Ass’n of Nat’l Advertisers*, 627 F.2d at 1171. An administrator “test[ing] his own views on different audiences” or “express[ing an] opinion prior to the issuance of a proposed rulemaking” does not show he “is unwilling or unable to consider rationally argument” from affected parties contrary to his position. *Id.* at 1173–74. It is permissible for a regulator to “ma[ke] his intention known so that interested parties can contribute to the debate,” provided that the regulator in question remains open to an alternative course of action despite their initial intention. *Hous. Study Grp. v. Kemp*, 736 F. Supp. 321, 333 (D.D.C. 1990).

But an administrator’s statements and actions may show he is “unable to consider meaningfully” the evidence presented in a rulemaking. *Ass’n of Nat’l Advertisers*, 627 F.2d at 1170. In such cases, “[a]llowing the public to submit comments to an agency that has already made its decision is no different from prohibiting comments altogether.” *Nehemiah Corp.*, 546 F. Supp. 2d at 847. Indeed, “[t]here is no doubt that the purpose of [rulemaking proceedings] would be frustrated if [agency officials] had reached an irrevocable decision on whether a rule should be issued prior to . . . final action.” *Ass’n of Nat’l Advertisers*, 627 F.2d at 1170.

Several circumstances may indicate that an agency official is unable to meaningfully consider the public’s comments, including: (1) a preexisting internal directive to reach a particular result, *id.*

at 1172; and (2) a senior political official's patterns of behavior or statements, including an unequivocal announcement of a "dramatic change" in the agency's position, prior to the conclusion of an administrative proceeding, *Int'l Snowmobile Mfrs. Ass'n v. Norton*, 340 F. Supp. 2d 1249, 1260–61 (D. Wyo. 2004). Administrator Zeldin's conduct, both before and after he announced this Proposal, exemplifies each of these disqualifying courses of conduct, demonstrating that he prejudged the outcome of this proceeding.

A senior political official's definitive and unequivocal announcement of a "dramatic change" in the agency's position, prior to the conclusion of administrative proceedings, can "indicate a prejudged political conclusion." *Int'l Snowmobile Mfrs. Ass'n*, 340 F. Supp. 2d at 1260–61 (predetermined political decision to ban snowmobiles shown by statements that "there will be . . . no future for these antiquated polluting vehicles in the National Park System"). Administrator Zeldin made just such unequivocal announcements here.

In announcing EPA's reconsideration of several climate change-related rules, including the Reporting Rule at issue here, Administrator Zeldin demonstrated an unalterably closed mind by repeatedly and consistently characterizing the announcement itself as marking a dramatic change in course, styling March 11, 2025, the date of that announcement, as "the Greatest Day of Deregulation in American History."¹⁵² In Administrator Zeldin's press release on the announced reconsideration proceedings, he once more asserted, "*today is the greatest day of deregulation our nation has seen.*"¹⁵³ Multiple press releases reiterate March 11 is "the greatest and most consequential *day* of deregulation in U.S. history." On March 12, Administrator Zeldin's *Wall Street Journal* opinion piece declared: "*Yesterday was the most consequential day of deregulation in American history.*"¹⁵⁴ On July 29th, EPA reiterated that the "greatest and most consequential day of deregulation in the history of the United States" occurred "in March 2025."¹⁵⁵ Administrator Zeldin repeatedly identified the *announcement* of reconsideration proceedings as the operative action.¹⁵⁶ These statements indicate that prior to receiving any comments, Administrator Zeldin had already made a definitive decision about repealing prior climate change regulations.

Administrator Zeldin's commentary indicates not just a precommitment to *a* change as of March 11, 2025, but also a commitment to a particular *type* of deregulatory change, prior to receiving

¹⁵² *EPA Administrator Lee Zeldin Launches the Greatest Day of Deregulation in American History*, YouTube: EPA (Mar. 12, 2025) [hereinafter "March 12 Zeldin 'Deregulation Day' Speech"], <https://www.youtube.com/watch?v=qae9bhymH50> [<https://perma.cc/A8F9-AUCD>].

¹⁵³ *EPA Launches Biggest Deregulatory Action in U.S. History*, U.S. ENV'T PROT. AGENCY (Mar. 12, 2025) [hereinafter "March 12 EPA 'Deregulatory Day' Press Release"], <https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history> [<https://perma.cc/NQ58-FG2F>] (emphasis added).

¹⁵⁴ Lee Zeldin, *EPA Ends the 'Green New Deal,' WALL ST. J.* (Mar. 12, 2025) [hereinafter "March 12 Zeldin *WSJ* Op-Ed"], <https://tinyurl.com/2s39khjb> (emphasis added).

¹⁵⁵ *EPA Releases Proposal to Rescind Obama-Era Endangerment Finding, Regulations that Paved the Way for Electric Vehicle Mandates*, U.S. ENV'T PROT. AGENCY (July 29, 2025) [hereinafter "July 29 EPA Endangerment Finding Press Release"], <https://www.epa.gov/newsreleases/epa-releases-proposal-rescind-obama-era-endangerment-finding-regulations-paved-way> [<https://perma.cc/V2ZY-KVHX>].

¹⁵⁶ March 12 EPA 'Deregulatory Day' Press Release, *supra* n.153, ("*As a result of these announcements, the cost of living for American families will decrease.*") (emphasis added).

any public comments at all. In declaring “the greatest and most consequential day of deregulation in U.S. history,”¹⁵⁷ Administrator Zeldin indicated unequivocally that EPA’s actions would be *deregulatory*.¹⁵⁸ To characterize EPA’s actions as definitively deregulatory commits the agency to one direction: shrinking or eliminating the reporting rule. But to characterize the initiation of reconsideration proceedings—before even the release of a proposal—as the “greatest and most consequential day of deregulation in U.S. history”¹⁵⁹—reveals EPA’s commitment to an extreme scale of deregulation before any consideration of the public’s input.

Administrator Zeldin included other “gratuitous (but prejudicial)” statements, *Int’l Snowmobile Mfrs. Ass’n*, 340 F. Supp. 2d at 1260, displaying extreme contempt for the protective purpose of GHG regulations and indicating he cannot and will not consider evidence in favor of GHG regulations. Twice, in both a Press Release and an Op-Ed, Administrator Zeldin asserted that, by “overhaul[ing] the Endangerment Finding,” the EPA was “driving a dagger straight into the heart of the climate change religion.”¹⁶⁰ Administrator Zeldin repeatedly characterized climate change prevention efforts as the “Green New Scam,”¹⁶¹ and asserted on March 12, 2025, that “[t]oday marks the death of the Green New Scam.”¹⁶² Administrator Zeldin leveled wild aspersions against the motive behind and nature of climate change regulations, accusing the decision to enact GHG regulations in general of being a “quest to destroy the American economy in the name of climate change.”¹⁶³ This intemperate, absolutist, and inflammatory language clearly indicates Administrator Zeldin “is unwilling or unable to consider rationally” contrary evidence and argument regarding the value to public health and welfare of controlling GHG emissions. *Ass’n of Nat’l Advertisers*, 627 F.2d at 1174.

These statements more than overcome the contemporary, pro forma statements Administrator Zeldin and the EPA made disclaiming any prejudgment of the outcome. Much like so-called “savings clauses” directing agencies to proceed “consistent with law,” these statements “are read in their context” and cannot overcome “clear and specific language” that shows exactly the prejudgment these statements disclaim. *See City & Cnty. of S.F. v. Trump*, 897 F.3d 1225, 1239 (9th Cir. 2018); *see HIAS, Inc. v. Trump*, 985 F.3d 309, 325 (4th Cir. 2021).

While Administrator Zeldin’s inflammatory language is incompatible with the open mind that agency rulemaking demands, it is wholly consistent with President Trump’s Day One directive to eliminate regulations that “burden” fossil fuel use and other Executive commands. Executive Order No. 14154, *Unleashing American Energy*, 90 Fed. Reg. 8,353, 8,354 (Jan. 29, 2025) (*Unleashing EO*). Read in context with the *Unleashing EO*’s unmistakable condemnation of environmental regulations that inhibit the development of fossil fuel resources, *id.* at 8353, and

¹⁵⁷ *Id.*; see July 29 EPA Endangerment Finding Press Release, *supra* n.155.

¹⁵⁸ March 12 Zeldin ‘Deregulation Day’ Speech, *supra* n.152; see also March 12 EPA Endangerment Finding Press Release, *supra* n.152; March 12 Zeldin *WSJ* Op-Ed, *supra* n.154.

¹⁵⁹ March 12 EPA ‘Deregulatory Day’ Press Release, *supra* n.153.

¹⁶⁰ March 12 EPA Endangerment Finding Press Release, *supra* n.155; see March 12 Zeldin *WSJ* Op-Ed, *supra* n.154.

¹⁶¹ March 12 Zeldin *WSJ* Op-Ed, *supra* n.154; March 12 EPA Endangerment Finding Press Release, *supra* n.155.

¹⁶² March 12 Zeldin *WSJ* Op-Ed, *supra* n.154.

¹⁶³ Lisa Friedman, *How Lee Zeldin Went From Environmental Moderate to Dismantling the E.P.A.*, N.Y. TIMES (Mar. 30, 2025), <https://www.nytimes.com/2025/03/29/climate/lee-zeldin-epa.html>.

its attacks on federal laws and congressional funding that support greenhouse gas reductions, *id.* at 8357, any reading of section 6(f) directs EPA toward one result: withdrawing the GHG Reporting Rule. That internal directive likewise shows the Administrator is not “free, [neither] in theory [nor] in reality, to change his mind.” *Ass’n of Nat’l Advertisers*, 627 F.2d at 1172; *see Int’l Snowmobile Mfrs. Ass’n*, 340 F. Supp. 2d at 1260 (citing Assistant Secretary’s memorandum, prior to conclusion of environmental review, “directing the agency to prohibit snowmobile access in national park units” and providing “a sweeping condemnation of all recreational snowmobile use in the National Park System” as evidence of prejudgment).

2. The Proposal’s Rationale is Pretextual

The above evidence also indicates that the actual motivations for the proposed repeal have been improperly excluded from the administrative record, and that the reasons in the Proposal are pretextual. Indeed, the pretextual nature of the Proposal is apparent on its face: the Executive Summary states: “President Trump signed Executive Order (E.O.) 14154 titled, “Unleashing American Energy,” on January 20, 2025, and E.O. 14192 titled, “Unleashing Prosperity Through Deregulation,” on January 31, 2025. *In response to these E.O.s*, the EPA is reconsidering significant elements of the GHGRP. In this action, the EPA is proposing to eliminate GHG reporting requirements for all source categories under 40 C.F.R. Part 98 (hereafter referred to as “Part 98”) except for Petroleum and Natural Gas Systems (Subpart W of Part 98).” 90 Fed. Reg. at 44,595 (emphasis added). The President ordered EPA to roll back regulations, and EPA is doing so—but because the President ordered it, not because the data generated under the Reporting Rule is not needed to fulfill EPA’s statutory obligations.

All available evidence shows that EPA was motivated by the Administration’s political attacks on the legitimacy of climate change science and climate pollution regulations to benefit the fossil fuel industry. The U.S. Global Change Research Program has been disbanded and federal employees removed from their positions, the website that provided the public with access to the National Climate Assessments has been taken offline, and the scientists working on the next National Climate Assessment have been dismissed.¹⁶⁴ EPA has proposed to rescind the 16-year-old determination that GHG emissions endanger human health and welfare and to eliminate GHG standards for power plants and vehicles.¹⁶⁵ Thousands of employees at the federal agencies with the greatest expertise in climate change and ongoing research on climate change and climate impacts (including NOAA, NASA, and EPA) have been fired or let go.¹⁶⁶ In other words, the federal government has proposed to eliminate GHG emissions reporting from almost all emission sources while disregarding all rigorous, peer-reviewed science on the dangers posed by GHG emissions, eliminating pollution reduction requirements for the largest stationary and mobile sources of GHG pollution, and made it more difficult for actual experts to inform these actions by firing career employees with the relevant expertise and hiding the most relevant, rigorous

¹⁶⁴ Chelsea Harvey, *Top Website for Crucial U.S. Climate Information Goes Dark*, SCI. AM. (July 1, 2025), <https://www.scientificamerican.com/article/u-s-national-climate-assessments-website-goes-dark/> [<https://perma.cc/PU9F-W4EM>].

¹⁶⁵ 90 Fed. Reg. 36,288 (Aug. 1, 2025); 90 Fed. Reg. 25,752 (June 17, 2025).

¹⁶⁶ Harvey, *supra* n.164.

federal syntheses of climate science. The Administration is engaged in an intentional, concerted effort to expunge data and expertise on the risks posed by climate change in support of its mission to “free” fossil fuel interests from the “burden” of mitigating emissions that endanger the human health and welfare of Americans.

Numerous Executive Orders also confirm what these actions make clear: the Administration and EPA’s true goal is to reshape the country’s energy sector in favor of the resources the Administration prefers,¹⁶⁷ misapplying various federal authorities—including the health-protective mandates of the Clean Air Act—in pursuit of this political end. EPA’s approach in the Proposal is by all indications shaped by the numerous Executive Orders that urge and facilitate greater use of fossil fuels, constrain use of renewable energy, and remove pollution abatement and even reporting obligations from pollution sources using fossil fuels. Statements by President Trump and agency leaders and officials have likewise evinced a desire to promote fossil fuels, undermine renewable energy, and discourage the use of electric vehicles.¹⁶⁸

Here, far from a genuine concern over the need for or cost of collecting emissions data, the agency’s actual motivation appears to be—in service of Executive Orders promoting fossil fuels—to remove an inherent market disadvantage from the fossil fuel industry by eliminating pollution reporting that facilitates pollution control requirements. In any final agency action, the administrative record—as defined here by 42 U.S.C. § 7607(d)(7)(A)—must be “expanded” to include the genuine justifications underpinning this action. In particular, EPA must include both internal and external agency communications relevant to the action being taken, including

¹⁶⁷ In signing the first tranche of Executive Orders, President Trump stated: “We’re bringing back an industry that was abandoned. . . . All those plants that have been closed are going to be reopened.” Adam Burke, *Trump Orders Coal Revival, But Market Favors Natural Gas*, NAT’L PUB. RADIO (NPR) (Apr. 17, 2025), <https://www.npr.org/2025/04/16/nx-s1-5359013/trump-orders-coal-revival-market-favors-natural-gas> [<https://perma.cc/CB5T-P7VV>].

¹⁶⁸ See, e.g., *Watch: Trump says ‘we don’t allow windmills’ after cancelling nearly complete offshore wind project*, YOUTUBE: PBS NEWSHOUR, at 0:00-0:07, 0:19-0:31, 2:02-2:08 (Aug. 26, 2025), <https://www.youtube.com/watch?v=sp97kSwaBfQ> (President Trump: “Coal is back in this country too by the way. There’s a reason they use it, cause it’s good. . . . We don’t allow windmills. . . . [W]e don’t want . . . solar panels. . . . I hope [other countries] get back to fossil fuel. . . . [W]hether we like it or not, fossil fuel is the thing that works.”); ‘Electric Car Lunacy’: A Look at Harsh Things Donald Trump Said About EVs over the Years, MINT (Mar. 11, 2025), <https://www.livemint.com/news/donald-trump-is-buying-tesla-a-look-at-the-harsh-things-hes-had-to-say-about-evs-over-the-years-11741715920055.html> [<https://perma.cc/SRT5-QEP7>] (noting that during his presidential campaign, President Trump discussed “All Electric Car Lunacy,” described EV promotion as a “hoax” and a project of “Radical Left Fascists, Marxists & Communists,” and repeatedly claimed, contrary to fact, that electric vehicles cannot travel long distances); Brad Plumer & Lisa Friedman, *With Little Explanation, Trump Throws Wind Industry into Chaos*, N.Y. TIMES, (Aug. 26, 2025), <https://www.nytimes.com/2025/08/26/climate/trump-wind-farms-energy.html> (“‘The president is not a fan of wind, the economic impacts, the environmental impacts to fisheries,’ Mr. Zeldin said on Fox News, adding that the president believes the nation needs more fossil fuels.”); *id.* (“‘Americans deserve energy that is affordable, reliable and built to last — not experimental and expensive wind projects that are proven failures,’ Aubrie Spady, a spokeswoman for the Interior Department, said. . . .”); *Secretary of Energy Chris Wright delivers Keynote Remarks at CERAWEEK 2025*, U.S. DEP’T OF ENERGY (Mar. 10, 2025), <https://www.energy.gov/articles/secretary-energy-chris-wright-delivers-keynote-remarks-ceraweek-2025> [<https://perma.cc/68X3-R3W3>] (alleging that policies promoting the use of EVs had been “wreaking havoc on our auto industry.”).

communications with the White House and outside political and industry stakeholders. *See Dep't of Commerce v. New York*, 588 U.S. 752, 781 (2019).

In sum, EPA has prejudged the outcome of this rulemaking, and its stated reasons for eliminating GHG reporting for most sources and delaying reporting for the remainder are pretextual. Accordingly, EPA must withdraw this current proposed rule and begin a new rulemaking process that is untainted by the Administrator's prejudgment and that clearly discloses the grounds upon which the agency acted.

IV. THE PROPOSAL IS PROCEDURALLY FLAWED

EPA's Proposal is also procedurally flawed in at least two significant respects. These flaws are fatal to the Proposal, rendering it contrary to law as well as arbitrary and capricious. First, EPA fails to identify and explain differences from pertinent findings and recommendations from the National Academy of Sciences. Second, EPA fails to disclose, explain, and subject to public comment the use of artificial intelligence in the decision-making process. Both of these flaws require withdrawal of the Proposal in order to comply with the Clean Air Act's rulemaking procedures and allow for meaningful agency public comment and a deliberative agency decision-making process.

A. EPA failed to identify and explain differences from pertinent findings and recommendations from the National Academy of Sciences as required by Clean Air Act section 307(d).

Section 307(d)¹⁶⁹ requires EPA to include a "statement of basis and purpose" in both the proposed and final rules that "set[s] forth or summarize[s] and provide[s] a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee . . . and the National Academy of Sciences [NAS]."¹⁷⁰ 42 U.S.C. § 7607(d)(3), (d)(6)(A). And, if EPA's rule "differs in any important respect from *any* of these recommendations," then EPA must include "an explanation of the reasons for such differences." *Id.* (emphasis added). Yet, EPA fails to identify any of NAS's pertinent findings and recommendations in the Proposed Rule, much less grapple with their opposing conclusions.

Specifically, the Proposal states that the GHGRP's "reporting requirements do not serve an underlying statutory purpose," that "the information collected under the GHGRP is not necessary to carry out" EPA's statutory duties under the Clean Air Act, and that EPA does not intend to use such data in the future. 90 Fed. Reg. at 44,596, 44,598; *see supra*, Argument Section I.B. But EPA's proposed decision to ignore the sources of GHG emissions does not comport with the

¹⁶⁹ EPA has designated this rulemaking as subject to section 307(d) of the Clean Air Act. 90 Fed. Reg. at 44,606 (invoking 42 U.S.C. § 7607(d)(1)(V)).

¹⁷⁰ The NAS provides independent, objective analysis and advice to the government on complex scientific issues.¹⁷⁰ *Pub. Citizen v. U.S. Dep't of Just.*, 491 U.S. 440, 461 n.11 (1989). Its "[m]embers are elected by their peers for outstanding contributions to research." *See* Nat'l Acad. of Scis., *Organization*, <https://www.nasonline.org/about-the-nas/organization/> [<https://perma.cc/X8WK-Y8GY>]. NAS's "conclusions deserve special weight because Congress specifically instructed EPA to consider" them. *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 530 (D.C. Cir. 1983).

multitude of findings, recommendations, and comments by NAS that affirm the need for systematic tracking and regulation of GHGs across the U.S. economy.

For example, in a 2023 technical review of the Draft Fifth National Climate Assessment, NAS made findings and recommendations related to scientific standards for data and analytical quality,¹⁷¹ like the importance of using standard datasets.¹⁷² In 2024, NAS issued a report commenting that “overwhelming scientific evidence [supports] that climate change is dangerous and human caused,” and that the U.S. is among the leaders in terms of national GHG emissions.¹⁷³ And, in 2025, NAS issued a consensus study report (NAS Report) that confirmed “the evidence for current and future harm to human health and welfare created by human-caused GHGs is beyond scientific dispute.”¹⁷⁴ The NAS Report contains nearly 140 pages of findings, recommendations, and comments about climate change that are highly pertinent to EPA’s conclusions that the data collected pursuant to the GHGRP serves no statutory purpose, is “not necessary,” and will not be used in the future.

EPA must identify these and “any” other pertinent NAS reports,¹⁷⁵ and it must grapple with the differences between NAS’s findings, recommendations, and comments and its own. A failure to collect national GHG emissions data will impede progress towards understanding how GHG emissions threaten public health and welfare, and EPA must explain its contrary conclusion that the U.S. has no need to track and regulate GHG emissions. Its failure to do so renders the Proposal—and would render a final rule with the same flaws—arbitrary, capricious, and unlawful. Moreover, a failure to respond to “new data submitted in writ[ing] . . . during the comment period”—such as the NAS Report—would render a final rule arbitrary, capricious, and unlawful. 42 U.S.C. § 7607(d)(6)(B).

B. Artificial Intelligence in the decision-making process.

It is well-established that, in agency rulemakings, “the most critical factual material that is used to support the agency’s position on review must have been made public in the proceeding and exposed to refutation.” *Air Transp. Ass’n of Am. v. FAA*, 169 F.3d 1, 7 (D.C. Cir. 1999) (emphasis

¹⁷¹ *Review of the Draft Fifth National Climate Assessment*, NAT’L ACADS. OF SCIS., ENG’G & MED., 1 (2023) [hereinafter “NCA5 Review”] <https://www.nationalacademies.org/our-work/review-of-the-draft-5th-national-climate-assessment> [<https://perma.cc/C5AH-CVBL>]. The National Academy of Sciences, together with the National Academy of Engineering and the National Academy of Medicine, comprise NASEM (referred to collectively herein as NAS).

¹⁷² *Id.* at 24.

¹⁷³ *Accelerating Decarbonization in the United States: Technology, Policy, and Societal Dimensions*, NAT’L ACADS. OF SCIS., ENG’G & MED., 5 (2024), <https://www.nationalacademies.org/our-work/accelerating-decarbonization-in-the-united-states-technology-policy-and-societal-dimensions> (As of 2024, “[t]he United States has the largest cumulative, and twelfth largest per capita, GHG emissions of any country, and the second largest annual emissions (after China) but until passage of the IRA, the United States was not at the vanguard of national actions to combat climate change.”).

¹⁷⁴ 2025 NAS Report at 1, *supra* n.75.

¹⁷⁵ See e.g., *Review of U.S. Global Change Research Program’s Draft Decadal Strategic Plan, 2022-2031*, NAT’L ACADS. OF SCIS., ENG’G & MED. (2022), <https://nap.nationalacademies.org/catalog/26608/review-of-the-us-global-change-research-programs-draft-decadal-strategic-plan-2022-2031>, [<https://perma.cc/7YLE-4FRP>]; NCA5 Review, *supra* n.171.

in original). Not only the substance of EPA’s decision, but also the methods used to reach it, must be made available for public comment. Although agencies may utilize computer models—including artificial-intelligence models—in the course of decision making, that use must be disclosed and subjected to comment. Among other things, “[w]hen an agency uses a computer model, it must explain the assumptions and methodology used in preparing the model and, if the methodology is challenged, must provide a complete analytic defense.” *U.S. Air Tour Ass’n v. FAA*, 298 F.3d 997, 1008 (D.C. Cir. 2002) (cleaned up).

The Proposal and accompanying documents that EPA placed in its rulemaking docket for this rule neither assert nor, insofar as commenters have been able to discern, reveal any role of AI or other computer models in the Proposal’s formulation, or any plans to utilize AI in formulating the final rule, including in reviewing public comment. The Agency, however, has recently announced that it “uses software with AI methods to more efficiently complete resource-intensive tasks like screening literature for relevance and data extraction.”¹⁷⁶ If, at any point during the rulemaking process, EPA has used or will use AI or other computer models, EPA must disclose—and solicit comment on—why a model was used; which model was selected and why, whether, and how the model has been validated; all prompts or inputs to the model (and how and why those prompts or inputs were selected); and how EPA has considered or may consider the model’s outputs or other incidents in decision making. If the outputs or other incidents of a computer program play a substantive role in EPA’s decision, then the program itself should be disclosed to commenters. In any instance where the program is not made available to commenters, or its results are not reproducible, EPA must explain why the program’s public availability or reproducibility is unnecessary to comply with the Clean Air Act, Information Quality Act, and other pertinent statutes, as well as applicable regulations, policies, and procedures concerning information management, information quality, and peer review. EPA must also disclose any persons and entities not employed by the agency who developed, modified, provided access to, or used a computer program in the course of the decision-making process. To do otherwise would violate black-letter law.

¹⁷⁶ *AI tools used in EPA’s Systematic Review Process*, U.S. ENV’T PROT. AGENCY, <https://assessments.epa.gov/risk/document/&deid=366912> [<https://perma.cc/BL44-JYE5>] (last updated Aug. 11, 2025).

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