U.S. Chamber of Commerce

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Comments of the U.S. Chamber of Commerce

Supplemental Notice of Proposed Rulemaking: Rescission of the Greenhouse Gas Findings for Fossil Fuel-Fired Power Plants and Repeal of Regulations for Power Plant Greenhouse Gas Emissions Under Clean Air Act Section 111

Docket ID No. EPA-HQ-OAR-2025-0124
91 Fed. Reg. 59,002 (Sept. 17, 2026)

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I. Overview

The U.S. Chamber of Commerce ("the Chamber") appreciates the opportunity to comment on the Supplemental Notice of Proposed Rulemaking: *Rescission of the Greenhouse Gas Findings for Fossil Fuel-Fired Power Plants and Repeal of Regulations for Power Plant Greenhouse Gas Emissions Under Clean Air Act Section 111*. The Chamber is the world's largest business federation, representing companies and professional organizations of every size, in every industry sector, and from every region of the country.

As the Chamber noted in its comments on EPA's initial proposed rule in this rulemaking, *Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units*, 90 Fed. Reg. 25,752 (June 17, 2025), the Chamber supports achievable, durable efforts to reduce emissions while maintaining an efficient and stable national electric grid poised to support unprecedented growth in demand during the years to come. The reliability and affordability of electricity are important issues to our members, including those members who own and operate the facilities that are directly affected by the regulatory requirements at issue. *See* Comments of the U.S. Chamber of Commerce et al., Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units, Docket ID No. EPA-HQ-OAR-2025-0124, at 1 (submitted Aug. 7, 2025) ("August 2025 Comments").

The Chamber strongly supports a broad range of policy actions to support resource adequacy and electricity affordability while reducing greenhouse gas ("GHG") emissions, including research, development, and deployment of carbon capture and storage ("CCS") and other technologies. However, regulations requiring the application of such technologies must be based on realistic, credible assumptions, and must comply with the law. Accordingly, the Chamber supported EPA's 2025 proposal to repeal its 2024 "Clean Power Plan 2.0" rule ("CPP 2.0") imposing standards of performance on fossil fuel-fired electric generating units based on three main components (capturing carbon dioxide at an annual rate of 90%; transporting it by pipeline to a storage site; and storing it in deep underground sites) as the best system of emission reduction ("BSER") under section 111 of the Clean Air Act ("CAA").[1] CPP 2.0 exceeded EPA's authority under section 111 and was based on faulty factual assumptions about the widespread availability and cost of CCS technology and the time that would be required for the buildout of a nationwide infrastructure system to support widespread CCS across the electric power sector. In addition, CPP 2.0 failed to account

[1] *See* 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; Final Rule, 89 Fed. Reg. 39,798 (May 9, 2024).

for the impact that the rule's requirements would have on the adequacy and reliability of the electric grid. August 2025 Comments 2-3.

In the Chamber's comments on the original 2025 proposed rule, the Chamber urged EPA to promptly finalize its proposal to repeal CPP 2.0 and to expressly adopt the rationale set forth in EPA's alternative proposal for repeal. The Chamber also urged EPA to expressly recognize that the best reading of CAA section 111 is that EPA is required to make a source-specific and pollutant-specific significant contribution finding for any particular pollutant before regulating emissions of that pollutant for a listed source category under section 111(b). August 2025 Comments 3, 31-34. The Chamber's comments did not opine on other issues raised in EPA's 2025 proposed rule. *Id.* at 3 n.2.

Consistent with the scope of the Chamber's comments on the 2025 proposed rule, the Chamber's comments on EPA's supplemental notice of proposed rulemaking are limited in nature, focusing on two issues: First, the Chamber commends EPA for EPA's parallel final rule adopting the rationale set forth in EPA's alternative proposal, as recommended by the Chamber and other stakeholders in their comments on the original 2025 proposed rule. *Partial Repeal of the Carbon Pollution Standards for Fossil Fuel-Fired Electric Generating Units*, 91 Fed. Reg. 58,594 (Sept. 17, 2026) ("Partial Repeal Rule"). Second, the Chamber urges EPA to reaffirm in any final rule that irrespective of whether EPA adopts the supplemental proposal in whole or in part, (1) the Clean Air Act will continue to displace federal common-law claims regarding GHG emissions, and (2) both common-law claims under state law, and state statutes that seek to impose liability of any kind, for harms allegedly caused by GHG emissions beyond a state's borders are barred under the Constitution, as well as by the CAA.

To the extent relevant to the supplemental proposed rule, the Chamber hereby incorporates its original comments by reference.

II. Discussion

A. The Chamber commends EPA for EPA's Partial Repeal Rule adopting the rationale set forth in EPA's alternative proposal.

As the Chamber explained in its original comments, EPA was correct to finalize the Partial Repeal Rule because CPP 2.0 exceeded EPA's authority under the CAA by relying on a BSER that has not been adequately demonstrated and imposed standards that were not achievable at the capture rate and widespread deployment required under that rule. August 2025 Comments 7-23. CPP 2.0 was defective in other respects as well. *Id.* at 23-27; *see id.* at 34. The Chamber has moved to intervene to defend the Partial Repeal Rule in consolidated litigation challenging that rule. *See* Motion of Chamber of Commerce of the United States of America for Leave to Intervene as Respondent, *American Lung Association v. EPA*, Nos. 26-1238 & 26-1259 (D.C. Cir. filed Oct. 16, 2026).

B. Irrespective of the outcome of this rulemaking, federal law will continue to preempt state laws and common-law claims based on global climate change, and the Clean Air Act will continue to displace federal common-law claims based on global climate change.

Consistent with the supplemental proposed rule's discussion of this issue, *see* 91 Fed. Reg. at 59,043-44, the Chamber urges EPA to reaffirm in any final rule that irrespective of whether EPA adopts the supplemental proposal in whole or in part, (1) the Clean Air Act will continue to displace federal common-law claims regarding global GHG emissions, and (2) any purported state-law requirements that would regulate, or impose liability for, global GHG emissions will remain foreclosed under the Constitution and preempted by the Clean Air Act. Under the Supreme Court's decision in *Am. Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011) (*AEP*) and other precedents, the CAA will continue to displace federal common-law claims based on GHG emissions; states and other parties will not be able to pursue federal or state common-law claims seeking relief for the effects of global climate change; and states will not be able to enact or enforce statutes that seek to impose liability for the effects of global climate change.

With regard to federal common-law claims based on GHG emissions, the Supreme Court has made it clear that such claims are displaced by the Clean Air Act, regardless of whether EPA has particular GHG emissions regulations in force, because "[t]he critical point is that Congress delegated to EPA the decision *whether and how* to regulate" such emissions under the CAA. *AEP*, 564 U.S. at 426 (emphasis added). For purposes of displacement, the crucial point is that Congress delegated that decision to EPA—irrespective of how EPA exercises that delegation. Indeed, as EPA noted in the supplemental proposed rule, its proposed repeals "would effectively return stationary source regulation to the pre-2015 status quo the Supreme Court faced in *AEP*," 91 Fed. Reg. at 59,043, at which time the Court held that the CAA displaced the federal common law claims at issue in that case. Of note, the Court explained in *AEP* that if "EPA [were] to decline to regulate carbon-dioxide emissions altogether" under Section 111, "the federal courts would have no warrant to employ the federal common law of nuisance to upset the Agency's expert determination." *AEP*, 564 U.S. at 426.

Similarly, any effort based on state law, whether by statute, by asserting common-law claims, or by any other mechanism, to regulate or impose liability for emissions of GHGs (or other pollutants) from sources beyond a state's borders is foreclosed under the basic scheme of the Constitution and preempted by the Clean Air Act, which has strong preemptive effect in this area. *See, e.g., City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021). Preclusion of state law under the structure of the Constitution, of course, does not depend on the CAA or on any action EPA takes under it. Such preclusion instead rests on the longstanding constitutional principle that federal law must govern disputes over interstate and international emissions. *See AEP*, 564 U.S. at 421; *City of New York*, 993 F.3d at 91-92. Such disputes implicate key

"federal interests", the "overriding need for a uniform rule of decision on matters influencing national energy and environmental policy" and "basic interests of federalism", "that are incompatible with the application of state law," *City of New York*, 993 F.3d at 91-92 (cleaned up), as well as constitutional limits on a State's authority to regulate conduct beyond its borders.[2]

III. Conclusion

For the foregoing reasons, the Chamber urges EPA to reaffirm in any final rule that (1) the Clean Air Act will continue to displace federal common-law claims regarding GHG emissions; and (2) both common-law claims under state law and state statutes that seek to impose any form of liability for harms allegedly caused by GHG emissions from sources beyond a state's borders are barred under the Constitution and the CAA.

The Chamber appreciates EPA's consideration of these comments and looks forward to working with the Agency as it continues to develop policies that support a reliable, affordable, and secure energy system while remaining consistent with the requirements of the Clean Air Act.

[2] The Supreme Court is considering these issues in *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, No. 25-170. The Court heard argument in this case on October 5, 2026. The Chamber's merits-stage amicus brief in *Suncor* is available at https://www.uschamber.com/assets/documents/U.S.-Chamber-Amicus-Brief-merits-Suncor-Energy-U.S.A.-Inc.-v.-County-Commissioners-of-Boulder-County-U.S.-Supreme-Court.pdf.