November 3, 2025

ELECTRONIC SUBMISSION

Attn: EPA-HQ-OAR-2025-0186

U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20004

RE: Reconsideration of the Greenhouse Gas Reporting Program, Docket No. EPA-HQ-OAR-2025-0186

To Whom It May Concern:

On September 16, 2025, the U.S. Environmental Protection Agency (EPA) published the proposed "Reconsideration of the Greenhouse Gas Reporting Program" (Proposed Rule).[1] Because the Greenhouse Gas Reporting Program (GHGRP), as currently implemented, exceeds the scope of the relevant authorizing text of the Clean Air Act (CAA),[2] especially when informed by a strong understanding of the Paperwork Reduction Act (PRA),[3] I welcome and agree with EPA's proposal to streamline the GHGRP. In the hopes of assisting EPA in that effort, I respectfully submit these comments for EPA's consideration.

Summary of Proposed Rule

In this Proposed Rule, EPA proposes two major courses of action. EPA first proposes to amend the GHGRP[4] to remove program obligations for most source categories, including the distribution segment of the petroleum and natural gas systems source category, which lies in subpart W – Petroleum and Natural Gas Systems.[5] In addition, EPA proposes to suspend program obligations for the remaining subpart W segments until reporting year 2034.[6]

Discussion

This discussion is organized as follows: Part I supports EPA's proposed conclusion that EPA lacks the statutory authority to collect GHGRP data for those sectors not subject to CAA § 136. Part II discusses how, even if EPA decides that such collections are in fact statutorily allowed, EPA still retains the discretion to reconsider the GHGRP as proposed, and moreover that the proposed reconsideration is good policy. Part III explains why there are no legitimate reliance interests that should prevent EPA from promulgating its Proposed Rule, and Part IV

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[1] U.S. Environmental Protection Agency, "Reconsideration of the Greenhouse Gas Reporting Program." *Federal Register*, Vol. 90, No. 177 (September 16, 2024), p. 44,591.
[2] Clean Air Act, 42 U.S.C. 7401 *et seq.*
[3] Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*
[4] 40 CFR Part 98.
[5] 40 CFR 98.230 – 98.238.
[6] 90 Fed. Reg. at 44591.

supports EPA's proposed suspension until 2034 of the reporting requirements for the industries listed in subpart W, whilst encouraging EPA to consider how this proposed suspension can be further improved. Finally, for EPA's consideration, Part V provides several ideas on how the text can be amended to further promote the policy goals that EPA expressed in its Proposed Rule.

I. EPA is correct in its proposed conclusion, that EPA lacks the authority to collect GHGRP data for those sectors not subject to CAA § 136.

To understand the scope of the power that Congress granted EPA in Section 114(a)(1) the CAA, "We look first to the text of the statute."[7] Taken on its own, the text of this authorizing provision permits, rather than requires, EPA to establish the GHGRP: "[T]he Administrator *may* require any person who owns or operates any emission source…"[8] to submit the information authorized under the GHGRP. While this provision permits EPA to establish the GHGRP, it must yield to the other, mandatory requirements that Congress has established, for EPA and for Federal agencies generally. This is particularly true given that, since EPA initially established the GHGRP, the Supreme Court has ended the previous regime of *Chevron* deference[9] and developed its Major Questions Doctrine caselaw,[10] consistently strengthening the emphasis that regulatory agencies must justify their rules through clear statutory authority.

a. Notwithstanding the permissive language of the CAA, the PRA prohibits agencies from placing reporting and other information collection requirements on private parties without specific justification.

Congress enacted the PRA in 1980, and reauthorized the Act in 1995,[11] in part to address the concern that the Federal Government was imposing too heavy a paperwork and compliance burden on the American public by requiring businesses, individuals, and other entities to fill out too much paperwork. The requirements, as laid out in Section 3506 of the PRA,[12] make agencies identify a specific objective met by the collection of information,[13] and also develop a plan for the use of that information.[14] In other words, under the PRA an agency may not collect information simply because the resulting knowledge might be interesting to have on hand or to display. Rather, the PRA requires that the agency identify a need that the information can fill and prepare a plan on how that information will be used.

OIRA is not supposed to approve information collection requests by agencies in the first place without a clear explanation from the agency on how the requested information is actually useful to the agency.[15] Moreover, agencies are required to identify a practical utility for the

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7 *Ams. for Clean Energy v. EPA*, 864 F.3d 691, 714 (D.C. Cir. 2017) (Kavanaugh, J.).
8 42 U.S.C. 7414(a)(1) (emphasis added).
9 *See Loper-Bright Enterprises v. Raimondo*, 603 U.S. 36 (2024).
10 *See West Virginia v. EPA*, 597 U.S. 697 (2022).
11 Codified at 44 U.S.C. 3501-3521.
12 44 U.S.C. 3506(c)(1).
13 44 U.S.C. 3506(c)(1)(i).
14 44 U.S.C. 3506(c)(1)(vi).
15 Carey, Maeve P. & Ortiz, Natalie R. (2024, April 17). *The Paperwork Reduction Act and Federal Collections of Information: A Brief Overview*). (CRS In Focus No. IF 11837). https://www.congress.gov/crs-product/IF11837.

information that they are collecting, and are meant to consider how to minimize the information collection burden.[16]

Thus, notwithstanding the *permission* that Congress has given EPA to collect information pursuant to the GHGRP, EPA is correct to balance that permission against the requirements laid out in the PRA, to limit such approved collections to information for which EPA has identified a concrete need grounded in specific statutory obligations, and for which EPA has "a plan for the efficient and effective management *and use*."[17]

This is particularly true given that EPA is likely underestimating the actual burden on the obligated stakeholders. EPA's estimate that each GHG report takes 0.07 hours on average to complete reflects a mere 4.2 minute average per submission,[18] which seems remarkably fast for such an involved calculation. Yet it is not clear from the accompanying Supporting Statement how EPA supports such a low estimate, and it is perhaps worth noting in this respect as a basis for comparison, that for its own climate disclosure rules, estimated an average $197,000 in annual compliance costs for each regulated entity, with an upper bound of $500,000 in the first year of compliance, and $375,000 per entity subsequent years.[19]

This raises major questions as to whether EPA's claimed compliance burden for PRA purposes is an understatement, given that $303 million in compliance costs that EPA has historically estimated across 12,434 responses (as estimated in EPA's most recent Information Collection Request for the program), would equate to a cost of less than $25,000 per response.[20] Even the lower amount of respondents reflected in this rule, of 8,200, would raise that estimate to less than $37,000 per stakeholder.[21]

Given that Congress has not identified a use for the GHGRP beyond the methane emissions and waste reduction incentive program for petroleum and natural gas systems as laid out in Section 136 of the CAA,[22] and that the language of the GHGRP's authorizing statute provides EPA with ample room to tailor the program toward Congress's needs, any continued reporting programs beyond the scope of CAA § 136 constitute an unreasonable burden on the regulated entities in light of EPA's obligations under the PRA.

[16] *See* Ortiz, Natalie R. (2024, May 22). *Burden and the Paperwork Reduction Act: An Overview*). (CRS In Focus No. IF 12673. https://www.congress.gov/crs-product/IF12673.
[17] 44 U.S.C. 3506(c)(1)(vi) (emphasis added).
[18] U.S. Environmental Protection Agency, "Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Greenhouse Gas Reporting Program (Renewal)." *Federal Register*, Vol. 89, No. 61, p. 21,516-17 (2024).
[19] *See* U.S. Securities & Exchange Commission, "The Enhancement and Standardization of Climate-Related Disclosures for Investors." *Federal Register*, Vol. 89, No. 61, p. 21,668 at 21,875 (2024).
[20] 89 Fed. Reg. at 21517.
[21] *See* 90 Fed. Reg. at 44599.
[22] 42 U.S.C. 7436.

b. Any ongoing authorization for the GHGRP must stem from the authorizing statutes rather than from appropriations from 15 years past

For the Fiscal Year 2008 budget, Congress passed legislation that provided EPA with a minimum of $3.5 million "to develop and publish a draft rule not later than 9 months after the date of enactment of this Act, and a final rule not later than 18 months after the date of enactment of this Act, to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States."[23] For the following fiscal year, Congress passed a similar appropriation of a minimum $6.5 million for EPA "to develop and publish a final rule not later than June 26, 2009, and to begin implementation, to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the U.S. economy, as required by Public Law 110-61"[24] (the previous year's appropriation).

Both appropriations contain language requiring "mandatory reporting of greenhouse gas emissions above thresholds in all sectors of the U.S. economy."[25] Yet a full understanding of appropriations law supports EPA's conclusion that "it has more than satisfied the Congressional direction provided under the FY 2008 Consolidated Appropriations Act and FY 2009 Omnibus Act and that it is appropriate at this time to discontinue the collection of information from all sources that do not have a statutory requirement to collect GHG emissions."[26]

i. *The authority for the GHGRP derives from the authorizing statute, not from an appropriation*

Congressional rules distinguish legislative authorizations, which address policy questions, and appropriations, which address funding.[27] Essentially, under these Congressional spending goes through a two-step process, where Congress *first* establishes the legislative authorization, also known as the enabling statute, which defines the legal parameters around which the agency can act, and *only afterwards* does Congress enact the appropriation whereby the agencies, and the policies carried out by the agencies, are funded.

The authorization and the appropriation are therefore separate legislative processes, and indeed, it is even possible for Congress to pass authorizing legislation, and fail to make that authorization come into practical effect by refusing to fund it.[28] Similarly, it is possible (and surprisingly common) for Congress to continue to appropriate funds for programs for which the authorization by the enabling statute has actually expired.[29]

The roots of the separate consideration of authorizing and appropriations extends to 1835 House debates discussing the problem of delays in enacting appropriations; at least part of this

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[23] FY 2008 Appropriations Act; Public Law 110-61, 121 Stat. 1844, 2128 (2007).
[24] 2009 Omnibus Appropriations Act; Public Law 111-8, 123 Stat. 524, 729 (2009).
[25] *Supra*, n. 16 and 17.
[26] 90 Fed. Reg at 44599.
[27] House Rule XXI, clause 2, and Senate Rule XVI, paragraph 1.
[28] *E.g.*, 42 U.S.C. 10101 *et seq.* (1982) (establishing a timetable of key milestones that Federal agencies were required to follow to carry out the safe storage and disposal of nuclear waste by 1998, which still has not happened).
[29] Congressional Budget Office. (2022). Expired and Expiring Authorizations of Appropriations for Fiscal Year 2022. https://www.cbo.gov/system/files/2022-08/57760-EEAA.pdf.

delay was based on the fact that appropriations bills were being slowed down by ongoing debates on the underlying policies that were subject to the appropriation process.[30] As a result, in the following Congressional session, language was added to the standing rules of the House of Representatives, to the effect that "[n]o appropriation shall be reported in such general appropriation bill, or be in order as an amendment thereto, for any expenditure no previously authorized by law." A similar procedure was added to the Senate rules in 1850; the division between authorizing legislation and appropriations bills has been a formal characteristic of the Congressional lawmaking process ever since.[31]

This process remains in the House and Senate Rules today. As Clause 2(a)(1) of House Rule XXI states, "An appropriation may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, for an expenditure not previously authorized by law." Thus, under House rules appropriations are generally limited to purposes "previously authorized by law." The Senate rule is similar, stating that nothing should be added to an appropriations bill "unless it be made to carry out the provisions of some existing law."[32] Moreover, as part of the two-step process, it is important to recall that the underlying statutory authorization is *permanent*, except in legislation that includes a sunset clause (not relevant here). Meanwhile, appropriations legislation by its nature is limited to the fiscal year to which that appropriation applies.

As such, it would not be correct to read the expansive language of these appropriations as somehow creating an expansive authority for EPA permanently to act on, given that such authorization would not have been possible under Congressional rules. At most, this language simply gave EPA an expansive remit for how to obligate the funds, during the fiscal years during which those appropriations applied.

ii. *EPA has satisfied its obligations under the FY 2008 and 2009 appropriations legislation*

To the extent that the appropriations legislation for FY 2008 and 2009 contained obligations for EPA related to the GHGRP, EPA has fully satisfied those obligations, and is not required by those appropriations to maintain nearly as comprehensive a program going forward. EPA satisfied these obligations when it published the Final Rule that created the GHGRP in 2009,[33] during the Fiscal Year covered by the 2009 omnibus appropriation.

Nothing in the appropriations language prevents that final rule from being subsequently revised, as EPA has in fact already tried to do on multiple occasions.[34] Indeed, while the appropriations language covered the entire economy, it left to EPA the determination on how to

[30] *See Congressional Globe*, 24th Cong., 1st sess. (December 10, 1835), p. 20.
[31] For historical development, *see* Louis Fisher, *The Authorization-Appropriation Process in Congress: Formal Rules and Informal Practices*, 29 Cath. U. L. Rev. 51 (1980). https://scholarship.law.edu/lawreview/vol29/iss1/4
[32] Senate Rule XVI, paragraph 1.
[33] U.S. Environmental Protection Agency, "Mandatory Reporting of Greenhouse Gases Rule." 74 Fed. Reg. 56260 (October 30, 2009).
[34] *See* 75 Fed. Reg. 39736 (July 12, 2010), 75 Fed. Reg. 74458 (November 30, 2010), 75 Fed. Reg. 74774 (December 1, 2010), 75 Fed. Reg. 75060 (December 1, 2010), and 89 Fed. Reg. 31802 (April 25, 2024).

tailor that scope to both its resources and its legislative authorizations. Notwithstanding the broad appropriations language, to equip EPA to cover the entire U.S. economy, Congress only followed up by enacting statutory obligations over one comparatively narrow sector, specifically petroleum and natural gas systems.[35]

Appropriations language only governs the funds to which that appropriation is attached, so appropriations language from 16 years ago carries little weight. Unless Congress follows up with further authorizations or perhaps appropriations, it is proper, as a matter of stewarding resources and obeying its statutory constraints, for EPA to streamline the GHGRP accordingly.

II. Even if EPA were statutorily permitted to require greenhouse gas reporting from those sectors not covered by CAA § 136, EPA's decision to remove those sectors from the GHGRP is an appropriate exercise of EPA's discretion.

To reiterate, we look at the words of the CAA § 114(a)(1), authorizing the GHGRP: "[T]he Administrator *may* require any person who owns or operates any emission source…"[36] The use of the term "may" to describe EPA's authority under this section, rather than "shall" or "must," clearly indicates ample discretion, not merely in how to administer the GHGRP, but even in determining whether any potentially regulated entity should in fact be subject to the GHGRP. After all, as Chief Justice Roberts wrote, "'May' does not just suggest discretion, it *clearly* connotes it."[37]

Indeed, Chief Justice Roberts characterizes the word "may" as an "expressly discretionary"[38] term. If Congress had intended to require EPA to administer the GHGRP so as to cover a broader swathe of the U.S. economy, then it makes little sense that Congress would convey such a requirement in unmistakably permissive rather than mandatory language. This has been a regular observation in Supreme Court caselaw in recent years.[39] It is also a veritable canon of statutory interpretation, which Justice Scalia and Bryan Garner described as the mandatory/permissive canon, namely, "Mandatory words impose a duty; permissive words grant discretion."[40] Appropriately, "may" is the example that the authors give of such a permissive word granting discretion.[41]

Having established that, even if assuming *arguendo* that the proposed reconsideration is not statutorily required, it falls well within EPA's discretion, there are many strong reasons to support EPA's proposal.

First, this is both a simple and significant move to lessen a regulatory burden on obligated parties. As such, EPA's proposal sits in line with the important policy imperatives

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[35] 42 U.S.C. 7436.
[36] 42 U.S.C. 7414(a)(1) (emphasis added).
[37] *Biden v. Texas*, 142 S. Ct. 2528, 2541 (2022).
[38] *Id.* at 2542.
[39] *Id.* at 2541; *Opati v. Republic of Sudan*, 590 U.S. 418 (2020); *Halo Electronics, Inc. v. Pulse Electronics, Inc.*, 579 U.S. 93 (2016); *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 136 (2005); *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 533 (1994).
[40] Scalia, A. & Garner, B., *Reading Law: The Interpretation of Legal Texts* (Eagan: West Group, 2012), p. 112.
[41] *Id.*

outlined by the Administration in its executive orders. In particular, as set forth in the President's Executive Order on Unleashing American Energy, EPA's proposal aligns with the directive "to ensure that all regulatory requirements related to energy are grounded in clearly applicable law."[42] This proposal also accords with the goals spelled out in the President's Executive Order on Unleashing Prosperity Through Deregulation, which calls for sensible deregulation given how "the ever-expanding morass of complicated Federal regulation imposes massive costs on the lives of millions of Americans, creates a substantial restraint on our economic growth, and hampers our global competitiveness."[43]

These goals are particularly important in the context of a regulatory program that collects information for no other statutory purpose, and therefore no measurable benefit. It does not take great imagination to note how confusing it would be for obligated stakeholders to be required to submit information to a reporting program that is untethered from any other underlying statutory or legal requirements, and how Kafkaesque it is for a Federal agency to have the power to punish industry members for noncompliance with a reporting program that, other than from the duty to report, has no purpose or underlying requirements.

In this context, EPA may want to recall that OMB publishes an annual Information Collection Budget, estimating the government-wide paperwork burden on the American public.[44] This estimate has grown inexorably over time, from 7.2 billion hours in Fiscal Year 2000, to 9.974 billion hours in FY 2021, and 10.34 billion hours in FY 2022.[45] As one writer noted, this is the equivalent of approximately 14,883 human lifetimes annually.[46] Given this long-term growth, it is not only commendable, but overdue that the Federal Government seek to identify regulations that can be streamlined. EPA's approach of finding regulations that mandate extensive information collections that lack any underlying statutory purpose is, in this context, a very reasonable approach.

Second, the compliance burden comes with costs, which EPA is required to take into account, and to ameliorate in absence of a pressing statutory purpose. EPA estimates (very conservatively) that these costs amount to $303 million annually,[47] although as noted above this number is likely to be a dramatic underestimate. In the context of the CAA itself, the Supreme Court has held, "One would not say that it is even rational, never mind 'appropriate,' to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits."[48] How much more strongly must that imperative apply here, where EPA itself has acknowledged that there are literally no quantifiable economic benefits associated with this

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[42] Exec. Order No. 14154, 90 Fed. Reg. 8353 (2025).
[43] Exec. Order No. 14192, 90 Fed. Reg. 9065 (2025).
[44] *See* U.S. Library of Congress. Congressional Research Service. The Paperwork Reduction Act and Federal Collections of Information: A Brief Overview, by Maeve P. Carey and Natalie R. Ortiz. IF 11837 (2024).
[45] Crews, C.W., Jr. (2023). Federal Paperwork Hours Consume the Equivalent of 14,883 Human Lifetimes Annually. Forbes. https://www.forbes.com/sites/waynecrews/2023/09/25/federal-paperwork-consumes-the-equivalent-of-14883-human-lifetimes-annually/
[46] *Id.*
[47] 90 Fed. Reg. at 44596.
[48] 576 U.S. 743 (2016).

regulatory program.[49] Indeed, anybody who tries to download this regulation can see that it has 932 pages. To apply this type of burden so broadly, at significant economic cost and with literally no economic benefit, is not a responsible exercise of EPA's regulatory powers or discretion.

Third, many of the policy rationales that EPA used to justify the GHGRP and other regulatory measures involving GHGs in the past are being reconsidered, to the extent that many of these justifications have become redundant. For instance, looking at the Supporting Statement that EPA used to justify the Information Collection Request most recently, EPA discusses how the GHGRP data helped inform its published New Source Performance Standards, yet EPA's proposal to rescind the Endangerment Finding,[50] if adopted, would make it unlikely that GHG emissions from such power sources would even be regulated in future, absent a further statutory or regulatory change.

Similarly, much Federal policy has until recently operated under the questionable assumption that carbon emissions have a quantifiable economic cost. Yet on his first day in office, the President declared the economic cost that Federal agencies attributed to the so-called "social cost of carbon" (SCC) to be "marked by logical deficiencies, a poor basis in empirical science, politicization, and the absence of a foundation in legislation," and directed EPA to reconsider the use of this calculation.[51] The President's criticisms are correct, given how the SCC can be manipulated based on projections that stretch 300 years into the future[52]; the way that the SCC calculations have been manipulated by an artificially low discount rate[53]; the extent to which the SCC has been inflated by inaccurate inputs; the way that SCC calculations have

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[49] 90 Fed. Reg. at 44603 ("Because this is a reporting rule and there are no requirements to reduce emissions, there are no expected emission changes or monetized changes in benefits from emissions").

[50] U.S. Environmental Protection Agency, "Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards." *Federal Register*, Vol. 90, No. 146 (August 1, 2025), p. 36,288.

[51] Exec. Order No. 14154, 90 Fed. Reg. at 8356.

[52] Dayaratna, K. & Kreutzer, D. "Loaded DICE: An EPA Model Not Ready for the Big Game." The Heritage Foundation, 2013.
https://www.heritage.org/environment/report/loaded-dice-epa-model-not-ready-the-big-game
Dayaratna, K. & Gae, A. "Calculating the 'Social Cost of Carbon' with the GIVE Model: An EPA Model Not Ready for Prime Time." The Heritage Foundation, 2025.
https://www.heritage.org/climate/report/calculating-the-social-cost-carbon-the-give-model-epa-model-not-ready-prime-time
Gae, A. & Dayaratna, K. "Social Cost of Carbon: DSCIM's Unreliable Foundations." The Heritage Foundation, 2025.
https://www.heritage.org/energy/report/social-cost-carbon-dscims-unreliable-foundations

[53] Dayaratna, K. & Kreutzer, D., "Unfounded FUND: Yet Another EPA Model Not Ready for the Big Game." The Heritage Foundation, 2014.
https://www.heritage.org/environment/report/unfounded-fund-yet-another-epa-model-not-ready-the-big-game
Dayaratna, K., McKitrick, R., & Kreutzer, D., "Empirically Constrained Climate Sensitivity and the Social Cost of Carbon." Climate Change Economics, vol. 08, no. 02, 2017. https://doi.org/10.1142/S2010007817500063
Dayaratna, K. McKitrick, R. & Michaels, P., "Climate Sensitivity, Agricultural Productivity and the Social Cost of Carbon in FUND." Environmental Economics and Policy Studies, vol. 22, 18 January 2020, pp. 433-48.
https://link.springer.com/article/10.1007/s10018-020-00263-w

been manipulated by improper (or lack of) specifications of agricultural productivity[54]; and how the SCC can even be turned into a negative number using quite reasonable assumptions.[55]

Now that the Federal Government is reconsidering so many of the flawed premises and regulations that have explicitly and implicitly been used to justify aggressive regulation of GHGs even beyond what is permitted by statute, it is sensible that EPA is reconsidering the GHGRP to ensure that EPA's regulatory mandates remain within the updated statutory and legal restraints.

Fourth, there are deep concerns as to what the purpose of this information collection is, when it is so untethered from any statutory obligations. The policy criticisms above have generally focused on the burden to obligated parties, in contrast to the lack of offsetting benefits. Yet the problem is deeper than that; these reporting requirements effectively amount to EPA placing a thumb on the policy scale against a broad array of American industries, to require self-disclosure to parties that as a general rule are not supportive of these industries, and seek greater regulation. It is fine for that debate to occur in the public sphere, but deeply problematic for EPA to try to influence that debate by imposing reporting obligations that are not tied to any specific statutory requirements.

In this vein, it is worth noting that certain members of Congress have been trying to pass the Providing Reliable, Objective, Verifiable Emissions Intensity and Transparency (PROVE IT) Act,[56] which would require the Federal Government to calculate carbon emissions on a broad range of different products made in the United States and abroad. It is worth noting that Congress has failed to pass this law, which raises questions as to the propriety of EPA going ahead and collecting a vast array of emissions on its accord, without Congressional direction, which effectively amounts to an administrative preemption of the Congressional prerogative.

More to the point, this information does not exist in a vacuum, but has potential uses that would damage the U.S. economy, and which help explain why Congress has not passed a statute concentrated on GHG reporting requirements. Indeed, amendments had been offered to prevent any information gathered from the PROVE IT Act from being used subsequently to impose carbon taxes, which failed on a party-line vote.[57] Whether advocates use the information to create a carbon tax, or to use in other anti-carbon activism, anti-carbon policies have strongly deleterious effects to the economy at large.

To begin with, they are inflationary[58] and regressive. In addition, these anti-carbon measures create major regional disparities, as the most carbon-intensive industries suffer the worst impacts. This causes higher food and gasoline prices for everybody, but rural areas are hit hardest. The complexity of these measures adds further to the compliance burden, and to the extent that these regulations push energy production offshore to areas with lower energy

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[54] *Id.*
[55] *Id.*
[56] S. 1863, 118th Cong. (2023).
[57] Lewis, M., Jr. (2024, February 7). Proof of the PROVE IT Act's carbon tax agenda. Competitive Enterprise Institute. https://cei.org/blog/to-carbon-tariff-or-not-to-carbon-tariff-that-is-the-question/
[58] *See* Murrey, B. (2022). Comparing 2022 Gubernatorial Nominees' Plans to Eliminate Colorado's Income Tax (Report No. IP-5-2022), pp. 9-11. Independence Institute. https://i2i.org/wp-content/uploads/IP-5-2022_b.pdf

standards, these measures actually increase global emissions while dampening U.S. economic growth. To the extent that such measures are required by statutory mandates (such as the Waste Emissions Charge), it is of course appropriate for EPA to implement its Congressional directives. Yet to the extent that Congress has not directed such actions, it is not only inappropriate for EPA to enact regulations that are designed to give more information and power to anti-energy activists, but it is bad policy as well.

III. There are no legitimate reliance interests that prevent EPA from reconsidering the GHGRP as proposed.

For the following reasons, there are no justifiable reliance interests on the part of any relevant parties that prevent EPA from reconsidering the GHGRP as proposed.

First, the CAA clearly lays out the scope of the GHRP in the opening paragraph of the relevant statutory provisions:[59] the purpose of the program is to develop or assist in the development of the implementation plans laid out in the CAA related to state implementation plans for national ambient air quality standards[60]; Federal standards of performance for new[61] or existing stationary power sources[62]; Federal emissions standards for hazardous air pollutants[63]; or Federal regulation of solid waste combustion.[64]

Thus, the statute gives clear warning that any reliance on the continued availability of this information, for reasons beyond the limited scope set forth here, is unreasonable. Although stakeholders across the Federal and State Governments, and within the private sector, are free to use whatever publicly available information fits their purposes, there is no entitlement that such statutory information will continue to be collected for non-statutory purposes, even if meritorious.

To the extent that other government programs use the reported information, they could find alternative sources of information. If such alternative sources are not available, then those programs should create their own mechanisms, with Information Collection Requests tailored to their specific needs, and should price the costs of those programs into their own regulatory impact analyses, rather than use the existence of EPA's GHGRP to impute a lower cost estimate to their own regulatory schema. Given the burden that the GHGRP imposes on obligated industry members, and the limited statutory justifications that Congress provided for this burden, it is not appropriate for those agencies effectively to delegate the collection of their information needs to an EPA program designed and authorized for more limited purposes, and then to use that non-statutory delegation as an argument to prevent EPA compliance with its own authorizing statutes, particularly in the context of a Proposed Rule designed to reduce the regulatory burden on EPA's own stakeholders.

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[59] 42 U.S.C. 7414(a).
[60] 42 U.S.C. 7410.
[61] 42 U.S.C. 7411.
[62] 42 U.S.C. 7411(d).
[63] 42 U.S.C. 7412.
[64] 42 U.S.C. 7429.

To the extent that private investors are using an expensive, burdensome, and mandatory reporting program to enable them to push for environmental policy goals through Environmental, Social and Governance (ESG) investing, these standards are in fact deeply problematic. Any such reliance would in fact further bolster the argument for EPA's proposed reconsideration. Although private investors are allowed to use any criteria, whether financial or non-financial, to guide their own investment decisions, that does not mean that companies should be regulatorily required to provide such data at their own burden and expense, absent a tangible statutory purpose. Given how aggressively ESG has been used by certain investment managers to try to pressure companies into pursuing social and political goals that have not been endorsed by the U.S. Government or the democratic process, for EPA to require such reporting is to effectively place a thumb on the scale in favor of activist investment managers who pursue their own socio-political agenda, potentially without regard to their fiduciary duties.

Activist investors sometimes obscure this agenda by referring to a need for investors to understand "climate risk." Yet to the extent that any climate risk exists, such risk would come from the overall climate, not from any individual company's GHG emissions. Of course, subject to relevant fiduciary constraints, investors may consider whatever they want when making their investment decisions. However, they have no legitimate interest in asking EPA to force disclosure to assist such activism, particularly when there is no statutory basis to require the disclosure that they are demanding.

Second, the Supreme Court has held that the Federal Government is entitled to "conclude that reliance interests in benefits that it views as unlawful are entitled to no or diminished weight."[65] This is further strengthened by the fact that, even in uncontroversial contexts, administrative agencies possess inherent authority to reconsider their decisions.[66] Given EPA's correctly proposed conclusion that CAA § 114(a)(1) requires a closer nexus between continuous reporting obligations and an underlying statutory purpose,[67] it is reasonable for EPA to conclude that the legal inappropriateness of the requirement, and the resulting burden on obligated parties, overwhelms any interest by parties who rely on the reporting for other, non-statutory purposes.

Third, this Proposed Rule is a liberalizing measure, permissive rather than prescriptive in nature. Nobody will legally be required to change their behavior in response to this rulemaking. The Proposed Rule simply removes regulatory obligations for all obligated parties, except most of those listed in subpart W, who would have their reporting obligations suspended until 2034. As EPA specifically noted in the Proposed Rule, "This proposal does not prevent private companies from continuing to collect information on GHGs independently."[68] Thus, to the extent that companies want to continue to collect this information and make it publicly available, nothing within this Proposed Rule prevents them from doing so.

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[65] *DHS v. Regents of the University of Cal.*, 591 U.S. 1, 32 (2020).
[66] *See, e.g., Spanish Int'l Broadcasting Co.*, 385 F.2d 615, 621 (1967); *Sierra Club v. Antwerp*, 560 F. Supp. 2d 21, 23 (2008), *ConocoPhillips Co. v. EPA*, 612 F.3d 822, 832 (5th Cir. 2010).
[67] 90 Fed. Reg. at 44596.
[68] 90 Fed. Reg. at 44595.

Fourth, and finally, even when an agency "ultimately concludes that the reliance interests rank as serious, they are but one factor to consider."[69] Balancing the totality of considerations raised in the Proposed Rule and in this comment, along with the specific factors that weigh against reliance as listed above, EPA should find that there are no reliance interests sufficient to bar the reconsideration of the GHGRP as set forth in this Proposed Rule.

IV. EPA's proposed suspension of reporting requirements under subpart W until reporting year 2034 is sound, although there is room for improvement

EPA's proposal to suspend the reporting requirements under subpart W until reporting year 2034 is an elegant way to balance EPA's various responsibilities to implement the Waste Emissions Charge as required by CAA § 136, while streamlining the paperwork and compliance burdens of obligated parties as required by the PRA, and also promoting the Administration's policy goals to unleash prosperity by streamlining regulations as laid out in Exec. Order 14192.

That said, the balance of EPA's various statutory and policy priorities could be further improved by reconsidering the reporting requirement, so as to exclude all GHGs other than methane. Given that CAA § 136 solely governs methane emissions, and given EPA's responsibility to tailor regulatory burdens narrowly to existing statutory requirements, EPA should not merely delay the reporting requirements until 2034, as the first year when the Waste Emissions Charge goes into effect under the methane emissions and waste reduction incentive program,[70] but should also go further and exclude all GHGs other than methane from the reporting requirements that take effect at that time.

There could be additional room for EPA to consider further ways to reduce the compliance burden in future by streamlining data requirements. However, as a statutory matter, it would not merely be good policy but statutorily necessary to streamline the reporting requirements by limiting the reporting obligation to methane emissions.

V. Suggested Changes

In the spirit of constructive engagement, and to promote the policy goals advanced by this proposed reconsideration of the GHGRP, I would recommend several changes as follows:

<u>40 CFR 98.1(a)</u>

The scope of this part should be narrowed, from establishing a mandatory GHG reporting program to a mandatory methane emissions reporting program.

The authorizing language of the CAA at § 136 only allows for the regulation of methane emissions.[71] Given that methane is only one of the so-called GHGs, this change would clarify that this program is limited to regulating methane emissions as directed by Congress in CAA § 136.

<u>40 CFR 98.2(a)</u>

The references to 40 CFR 98.2(a)(1) and (a)(4) should be removed.

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[69] *DHS v. Regents*, 591 U.S. at 32.
[70] 42 U.S.C. 7436(g).
[71] 42 U.S.C. 7436.

The introductory paragraph to this regulation states, amongst other items, that facilities that meet the requirements of (a)(1), (a)(2), (a)(3), or (a)(4) of this section are regulated by this part. However, (a)(1) and (a)(4) have been deleted and reserved, making these requirements effectively empty. Referring to empty paragraphs in this context is potentially confusing. If EPA insists on retaining the reserved paragraphs, EP should at least clarify that the reporting requirements only apply to those facilities that meet the requirements of paragraphs (a)(3) or (a)(4) of this section.

40 CFR 98.2(h)(3)

The references to "paragraphs (a)(1) through (4) of this section" should be changed to "paragraphs (a)(3) and (a)(4) of this section."

As noted directly above, paras. (a)(1) and (a)(3) now have no content, and are reserved, yet by our count, in the Proposed Rule 40 CFR 98.3(h)(3) refers to "paragraphs (a)(1) through (4) of this section" in two different places. It would clarify this section, and remove a potential source of confusion, to eliminate any reference to the reserved paragraphs.

40 CFR 98.3(b)(6)

EPA may want to consider pushing the regulatory deadline for reporting year 2025 later.

I support EPA in its understanding of the compliance burdens placed on industry in times of major regulatory change, and in its efforts to accommodate the obligated stakeholders by delaying the reporting year 2025 deadline for obligated stakeholders to no later than June 10, 2026. Our only suggestion here, as the rulemaking timelines become more concrete, is that EPA may want to consider pushing this back further, if subsequent developments merit such a move.

40 CFR 98.3(c)(4)(iv)

The language, "Except as provided in paragraph (c)(4)(vii) of this section" should be deleted.

Given that paragraph (c)(4)(vii) is an empty, reserved paragraph, this exception is potentially confusing, and should be deleted.

40 CFR 98.233

The heading should be reworded, from "Calculating GHG emissions" to "Calculating methane emissions."

The statutory requirement that EPA is effecting through this Proposed Rule pertains only to methane, so the scope of these instructions should be narrowed to account for this narrower scope. In addition, conforming changes should be made throughout this section, to ensure that EPA only regulates the methane to which there is a statutory nexus, rather than any other GHGs that lack such a nexus.

Subparts X Through ZZ

These subparts should simply be deleted, rather than "removed and reserved."

Marking sections within the Code of Federal Regulations as "[Reserved]" acts as a placeholder to potentially insert regulatory provisions or information in future.[72] Given that EPA is rescinding these regulations, not merely because EPA is exercising its prerogative to alter a regulatory scheme, but because EPA feels that it is required to do so due to the lack of any nexus between the existing reporting obligations and any underlying statutory purpose,[73] I am concerned that EPA would rescind these regulations in a way that would make it easier for future administrations to change the relevant provisions b ack, or to adopt similar regulations, simply by filling in the placeholders that EPA is currently leaving blank. We understand that renumbering can be tedious, which is why I do not object to EPA's proposal to reserve the subparts preceding subpart W; however, given that those preceding subparts leave plenty of room subsequently to insert later regulations, I would encourage EPA simply to delete the existing subparts that appear after subpart W.

Conclusion

I strongly support EPA's adoption of the Proposed Rule. EPA's proposed reconsideration would not only streamline an unreasonably burdensome 932-page regulation with no quantifiable economic benefits, but in doing so would tailor the GHGRP more closely to EPA's statutory mandates. Moreover, the proposed amendments are consistent with strong economic principles and the Administration's expressed policy goals.

Thank you for your consideration of these comments.

Respectfully yours,

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The Heritage Foundation[74]

[72] *E.g.*, National Archives. (August 2023). *About the Code of Federal Regulations* (stating, "NOTE: '[Reserved]' is a term used as a place holder within the Code of Federal Regulations. An agency uses '[Reserved]' to simply indicate that it may insert regulatory information into this location some time in the future.") (accessed September 2, 2025).
https://www.archives.gov/federal-register/cfr/about.html#:~:text=NOTE:%20"%5BReserved%5D",a%20printing%20or%20computer%20error.
[73] 90 Fed. Reg. at 44596.
[74] These comments reflect my personal views and not necessarily those of The Heritage Foundation.