

Comments of the International Center for Law & Economics

Reconsideration of the Greenhouse Gas Reporting Program, EPA-HQ-OAR-2025-0186, 90 FR 44591

October 29, 2025

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I. Introduction and Overview

The Environmental Protection Agency (EPA) is proposing to amend the Greenhouse Gas Reporting Program (GHGRP) to remove emissions-reporting requirements for most source categories except for petroleum and natural-gas systems, and to suspend reporting requirements for those categories until 2034.¹ The International Center for Law & Economics (ICLE) is a nonprofit, nonpartisan research organization whose core mission is to promote the application of law & economics methodologies to inform public-policy discussion. Our work focuses on developing intellectually rigorous, data-driven analyses to foster efficient policy solutions that enhance consumer welfare and global economic growth. ICLE scholars have written on the costs of disclosure rules,² including how they can violate the U.S. Constitution.³

The current GHGRP is a failure on both fronts. The costs of the program are substantial relative to its purported benefits, *and* it presents serious constitutional questions, including both compelled speech and separation-of-powers issues. The EPA is right to take this important action to amend the program's obligations to bring it in line with its statutory authority under the Clean Air Act (CAA)⁴ and to promote economic efficiency.⁵

The costs of the required disclosures are likely significantly underestimated, while their benefits are simply assumed. The EPA's current estimates of the costs to regulated businesses are considerably less than the Securities and Exchange Commission's (SEC) estimate for compliance with a similar emissions-disclosure rule. Moreover, these estimated compliance costs fail to include other dynamic effects of the disclosure regime, including that capital may flow away from the energy sector, to the detriment of innovative U.S. firms that rely on it.

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¹ *Proposed Rule, Reconsideration of the Greenhouse Gas Reporting Program*, 90 FED. REG. 44591 (Sep. 16, 2025), available at <https://www.govinfo.gov/content/pkg/FR-2025-09-16/pdf/2025-17923.pdf> [hereinafter "Proposed Rule"].

² See Geoffrey A. Manne, *The Hydraulic Theory of Disclosure Regulation and Other Costs of Disclosure*, 58 ALA. L. REV. 473 (2007).

³ Amicus Brief of the International Center for Law & Economics in Support of Plaintiff's Motion for Second Preliminary Injunction, *NetChoice, LLC v. Bonta*, Case No. 5:22-cv-08861-BLF (Dec. 14, 2022), available at <https://laweconcenter.org/wp-content/uploads/2024/11/ICLE-Amicus-NetChoice-v.-Bonta-Northern-District-Court.pdf>.

⁴ 42 U.S.C. §7414.

⁵ See Exec. Order No. 14,192, *Unleashing Prosperity Through Deregulation*, 90 FED. REG. 9065 (Feb. 6, 2025).

Legally, the EPA's reliance on Section 114 of the CAA as its statutory authority for the GHGRP is currently on shaky ground. According to the statute, the EPA "may require" certain record keeping, reports, and other requirements for the purpose of "developing or assisting in the development of any implementation plan" under the agency's authority granted elsewhere in the CAA, to include "determining whether any person is in violation of any such standard or any requirement of such a plan" or "carrying out any provision of this chapter."⁶ The GHGRP has grown significantly to include 47 source categories, for most of which the EPA has never developed any regulations, nor displayed any intent to do so. In other words, these report mandates are not for any authorized statutory purpose but are aimed instead at forcing various industries to publicly account for their contributions to climate change. Based on recent Supreme Court precedents, the current rule invites First Amendment challenges, as well as statutory authority and Major Questions Doctrine challenges.

The EPA's proposed amendment to the GHGRP would bring the program into alignment with the Constitution and promote more efficient allocation of capital in the vital U.S. energy sector.

II. A Cost-Benefit Analysis of GHGRP Reporting Requirements

A core principle of the law & economics methodology holds that regulation should (1) correct demonstrated market failures; (2) match the regulatory tool to the nature of the market failure; and (3) do so only when the benefits of intervention exceed its costs.⁷

Disclosure rules typically are premised on the argument that regulated entities would not reveal relevant information to the public, resulting in market failures due to asymmetric information. Therefore, it is argued, mandated disclosures allow the public to adjust accordingly. The benefits of mandatory disclosure rules are often assumed to be high, but what is often *not* sufficiently considered are the costs.

Here, the benefits to the public of being able to ascertain the relative greenhouse-gas emissions of various industry participants have largely been assumed, without analysis. The SEC's similar disclosure mandate rule was promulgated on grounds that it would assure investors they have a complete picture of the climate-related risks faced by publicly traded companies, which could affect the value of those companies' securities.⁸ For the GHGRP, there is instead a bare assumption that the public benefits in some unspecified way from access to similar information. The EPA notes in

⁶ 42 U.S.C. §7414.

⁷ STEPHEN BREYER, *REGULATION AND ITS REFORM* (1982) 191 ("Our examination of market defects, classical modes of regulation, and alternative regimes suggest that regulatory failure sometimes means a failure to correctly match the tool to the problem at hand."), 184 ("It should be painfully apparent that whatever problems one has with an unregulated status quo, the regulatory alternatives will also prove difficult.")

⁸ See U.S. Securities & Exchange Commission, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Release No. 33-11275 at 10-11 (May 28, 2024), <https://www.sec.gov/files/rules/final/2024/33-11275.pdf>.

its proposal that the primary benefits are derived by government entities that use the information for calculating tax credits or for the terms of certain state programs.⁹

The marginal benefit of this disclosure rule is likely to be small. For instance, there are other federal surveys that could be used to estimate greenhouse-gas emissions. Moreover, the states could collect needed data under their own authorities, while taxing authorities could require other means to qualify for tax credits. There is little additional benefit from the GHGRP's reporting requirements either to the general public's understanding of emissions or for the purposes of effectively administering government programs or regulations.

More importantly, the costs of the current rule are likely severely undercounted. First, there are reasons to doubt the estimated compliance costs are accurate. Second, the costs in a more dynamic analysis may be significantly higher than those compliance costs suggest.

The EPA estimates that suspending the reporting requirements will save \$303 million annually.¹⁰ Divided among the roughly 8,200 regulated entities, the total comes to \$36,951.22 per entity. But the SEC's proposed rule estimated total compliance costs of \$500,000 for the average regulated entity in the first year of compliance and \$375,000 in subsequent years, with the compliance costs for emissions disclosures alone to be \$151,000 in the first year and \$67,000 annually in subsequent years.¹¹ While the SEC's regulations applied to different entities than those under GHGRP, and also include additional requirements, it appears likely that industry is directionally correct in arguing the EPA's estimated costs of compliance are too low.

Moreover, the EPA almost certainly underestimates the total costs of the GHGRP disclosure rule.¹² For instance, continuous threats of litigation against energy companies for alleged harms associated with greenhouse-gas emissions surely count as costs for the regulated entities subject to these reporting requirements. GHGRP data is a goldmine for plaintiffs' lawyers seeking to bring action against targets that allegedly knew of alleged harms to which they allegedly contributed.

A dynamic analysis of these costs would suggest that capital would flow away from the energy-sector participants subject to the disclosure rule, as it would reduce the likely returns on investment. A safer bet would be in those industries not subject to the disclosure rules and their associated costs. Moreover, reduced investment in the energy sector could lead to harms far outside that sector, as much of the economy is fundamentally reliant on the production and distribution of low-cost energy.¹³

⁹ Proposed Rule at 44598-99.

¹⁰ *Id.* at 44596, 44599, 44603.

¹¹ SEC, *supra* note 8, at 739-40.

¹² See Manne, *supra* note 2, at 11-12 (arguing that "while the direct cost" of disclosure regulation is positive, "the indirect costs of regulations may be far more substantial").

¹³ See, e.g., Clark Savage, *Germany Blows Up Last Nuclear Plant Towers While Economy Collapses Under Net Zero Energy Policies*,

In sum, in conducting cost-benefit analysis of this proposed amendment to the GHGRP rule, the EPA should be sure to evaluate whether the marginal benefits of the current mandated disclosures outweigh their likely vastly underestimated costs. The proposed amendment to free most sources from the GHGRP's disclosure requirements and to forego reporting requirements for the oil and natural-gas sector until 2034 would appear to make economic sense.

III. Constitutional Issues with the Current Rule

While the economic rationale alone would justify the EPA using its discretion to amend the GHGRP reporting requirements, intervening Supreme Court precedent on compelled speech and the limits on administrative-agency discretion since the original rule was adopted may mean the proposed amendment is legally necessary.

A. First Amendment and Compelled Speech

The current GHGRP rule may violate the First Amendment, in that it compels regulated entities to produce and publish data conveying a message that they are causing environmental harm and contributing to climate change. Supporters of the reporting requirements would argue this is mere regulation of conduct or, at most, compelled commercial speech. But the caselaw since this original rule was adopted suggests that it would likely be subject to heightened First Amendment scrutiny.

In *National Institute of Family and Life Advocates v. Becerra*,¹⁴ the Supreme Court declined to apply a lower level of scrutiny to the disclosures at issue because it was not “purely factual and uncontroversial information about the terms under which... services will be available.”¹⁵

Here, the information is not necessarily purely factual and uncontroversial, and the theories that underlie the rule could be the basis of future litigation and regulation targeting the regulated entities.¹⁶ Litigants both public and private have used emissions data like that collected pursuant to the GHGRP in complaints to show that energy companies knew of the harms they allegedly caused. States also use the data as part of their programs.

But just as importantly, the reporting requirements likewise aren't simply a description of services that will be available. A given firm's emissions levels are not part of any proposed bargain. As the Court has stated, “precedents define commercial speech as ‘speech that does no more than propose

ENERGY NEWS BEAT (Oct. 27, 2025), <https://energynewsbeat.co/germany-blows-up-last-nuclear-plant-towers-while-economy-collapses-under-net-zero-energy-policies> (noting how the German economy is in crisis because of poor energy policies).

¹⁴ 585 U.S. 755 (2018).

¹⁵ *Id.* at 768 (quoting *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651 (1985)).

¹⁶ *Cf. Janus v. Am. Fed. of State, County, & Mun. Employees*, Coun. 31, 585 U.S. 878, 913-14 (2018) (identifying climate change as a “controversial” and “sensitive political” subject).

a commercial transaction.”¹⁷ Similar to the notice required in *NIFLA*, these reporting requirements are “in no way relate[d]” to the energy-sector products and services that these entities provide.¹⁸

What this means is that the current reporting requirements, if challenged, may have to face strict scrutiny. Under such scrutiny, the rule would have to be narrowly tailored to a compelling government interest. As noted above, the reporting requirements would fail such a cost-benefit test. The marginal benefits of the reporting requirements are almost certainly low, while the costs—including regulated firms’ potential liability in lawsuits based on the compelled speech—could very well be high.

This is not mere academic quibbling. There are two pending First Amendment lawsuits in federal courts against California’s SB 253 and SB 261 that would require similar greenhouse-gas emissions disclosures. A First Amendment challenge against the SEC climate-risk disclosure rule is also currently held in abeyance by the 8th U.S. Circuit Court of Appeals. The EPA is right to amend the GHGRP rule by limiting the entities subject to its requirements.

B. Separation of Powers

The current GHGRP rule could also violate the Constitution’s separation of powers. In ending its doctrine of *Chevron* deference¹⁹ and continuing to apply the Major Questions Doctrine,²⁰ the Supreme Court has made clear that administrative agencies must have clear statutory authority for their rules. The current GHGRP rule appears to far exceed the statutory authority granted the EPA by the CAA. The EPA is right to amend the rule to bring it in line with its statutory authority.

The EPA is no stranger to challenges to its statutory authority. The Supreme Court has made clear in multiple cases involving their rulemakings that “something more than a merely plausible textual basis for agency action is necessary” when claiming “unheralded regulatory power over a significant portion of the economy.”²¹ Regulating all the energy-related businesses subject to the GHGRP is a significant portion of the economy.

The textual basis for imposing reporting requirements on most sources currently subject to GHGRP is slim. Authority under Section 114 of the CAA limits the EPA’s ability to collect information to the purposes of developing state implementation plans, setting performance standards, or determining compliance with specific statutory programs.²² There is no basis under the statute to create perpetual reporting obligations unrelated to those purposes, as the existing GHGRP reporting requirements do.

¹⁷ *Harris v. Quinn*, 573 U.S. 616, 648 (2014) (quoting *United States v. United Foods, Inc.*, 533 U.S. 405, 409 (2001)).

¹⁸ *NIFLA*, 585 U.S. at 769.

¹⁹ See *Loper Bright Enterprises v. Raimondo*, 603 U.S. 36 (2024).

²⁰ See *West Virginia v. EPA*, 597 U.S. 697 (2022); *Utility Air Regulatory Group v. EPA*, 573 U.S. 302 (2014).

²¹ *West Virginia*, 597 U.S. at 722, 723 (quoting *UARG*, 573 U.S. at 324).

²² See 42 U.S.C. §7414.

Moreover, when Congress enacted CAA Section 136, it directed the EPA to impose certain obligations on petroleum and natural-gas producers starting in 2034.²³ Pursuant to those obligations, the EPA is authorized to track emissions and modify the rule here.²⁴ This suggests that the authority to impose reporting requirements was not already present in Section 114.²⁵

Accordingly, the EPA must act according to its statutory authority. Here, that means amending the GHGRP reporting requirements to be consistent with CAA Section 114. Since the EPA has not established any specific emissions regulations, nor does it have any plans to do so until 2034, when it exercises its authority pursuant to CAA Section 134 in relation to petroleum and natural-gas producers, the proposed amendment is necessary to effectuate congressional intent.

Conclusion

The best way forward for the EPA is to adopt the proposed rule in this proceeding. This would be consistent with both the underlying law and economics. The U.S. energy sector is too important to be subject to agency overreach, as exemplified in the current GHGRP rule.

²³ See 42 U.S.C. §7436.

²⁴ 42 U.S.C. §7436(a)(4); (h).

²⁵ Cf. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000) (“Given this history and the breadth of the authority that the FDA has asserted, we are obliged to defer not to the agency’s expansive construction of the statute, but to Congress’ consistent judgment to deny the FDA this power.”)