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EPA's Proposal to Rescind 2009 Endangerment Finding and the Impact of 'Loper Bright'

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On July 29, 2025, U.S. Environmental Protection Agency (EPA) Administrator Lee Zeldin released the EPA's proposal to rescind the 2009 endangerment finding. In support of its attempt to rescind the endangerment finding, the EPA relies on the U.S. Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* from 2024 and the revocation of the *Chevron* doctrine. This article explores the impact of *Loper Bright* on the EPA's effort to rescind the endangerment finding.

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Charles Dennen of Archer & Greiner.

Background on 2009 Endangerment Finding

The endangerment finding was an outgrowth of the U.S. Supreme Court's decision in 2007 in *Massachusetts v. EPA*, which held that greenhouse gases are air pollutants covered by the Clean Air Act. The court further held that the Clean Air Act requires the EPA to restrain pollutants that the EPA determines endanger public health and welfare by contributing to climate change.

In 2009, the endangerment rinding was issued under Section 202(a) of the Clean Air Act, which allows the EPA to regulate pollutants that the EPA determines are an endangerment to public health and welfare. For more than a decade, the endangerment finding has served as the foundation for a number of EPA regulations aimed at reducing greenhouse gas emissions, including emissions from vehicles, power plants and other industries.

On March 12, 2025, the EPA announced that it would initiate a "formal reconsideration" of the endangerment finding. In support of its

position to undertake a formal reconsideration of the endangerment finding, the EPA cites the Supreme Court's recent decision of *Loper Bright v. Raimondo*.

Background on 'Chevron' Doctrine and Its Erosion Under 'Loper Bright'

The *Loper Bright* decision overturned the long-standing *Chevron* doctrine that afforded deference to an agency's reasonable interpretation of statutory ambiguity. In particular, the *Chevron* doctrine instructed federal courts to defer to and uphold a federal administrative agency's reasonable interpretation of ambiguous and open-ended statutory language, even if the reviewing court would have read the statute differently. As applied since its inception in 1984, the *Chevron* doctrine provided federal agencies with flexibility to develop new, extend or even cut back on existing areas of regulatory oversight based on long-standing or general statutory authorities.

In *Loper Bright*, the Supreme Court held that the *Chevron* doctrine was improper and in conflict with the language of the federal Administrative Procedure Act (APA) insofar as it deprived the judiciary of its traditional role in deciding matters of law. Specifically, the court relied on the plain language of the APA, which provides that when reviewing federal agency action, "the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning of applicability of the terms of an agency action." Consequently, the court found that Section 706 of the APA does not contemplate federal agency deference when answering legal questions, and therefore, seats that responsibility exclusively with federal courts.

Critically (in the EPA's view), the *Massachusetts v. EPA* decision in 2007 that eventually led to the endangerment finding in 2009 relied on *Chevron* deference, which is no longer good law after *Loper Bright*. The EPA has taken the position that "the endangerment finding relied on various forms of *Chevron* deference to depart from the best reading of the statute and exceeded the EPA's authority in several fundamental respects, any one of which would independently require rescission to confirm to the best reading of the law." Thus, even when a statute is ambiguous, there is a "best reading" of the statute and the reviewing court is required to adopt the one that it concludes is best.

Impact of 'Loper Bright' on Endangerment Finding

The EPA's rescission of the endangerment finding is almost certain to face legal challenges. The endangerment finding is no stranger to legal action, including withstanding prior challenges that resulted in two separate opinions from the U.S. Court of Appeals for the D.C. Circuit upholding the endangerment finding and greenhouse gas regulations promulgated under the Clean Air Act. However, those challenges occurred in the pre-*Loper Bright* era when *Chevron* deference was still the law of the land. Now, with the Supreme Court having overturned *Chevron*, the EPA is clearly counting on courts being more receptive to

arguments that the endangerment finding was not grounded in sound scientific principles.

The EPA's argument is that the endangerment finding "relied on various forms of *Chevron* deference to depart from the best reading of the statute and exceeded the EPA's authority in several fundamental respects." The EPA asserts that the Clean Air Act was previously misinterpreted and statutory silence within the Clean Air Act granted the EPA discretion to construe the scope of its authority, ultimately leading to the enactment of the endangerment finding.

While the rationale behind the proposed rescission of the endangerment finding relies greatly on *Loper Bright* and the erosion of the *Chevron* doctrine, the *Loper Bright* decision could actually have the opposite effect than what the EPA intends. If the *Chevron* doctrine were still in place, the EPA would be able to argue that the statutory language of the Clean Air Act is ambiguous and the EPA's new interpretation of the act is entitled to deference. However, under *Loper Bright*, the EPA is now required to demonstrate that its new interpretation of the Clean Air Act is the "best reading" of the statutory language.

In essence, the *Loper Bright* decision likely increased the EPA's burden to repeal the endangerment finding. Meeting the new burden by demonstrating that the EPA's new interpretation of Section 202(a) of the Clean Air Act is the best reading of the statute may be particularly difficult in light of the Supreme Court's decision in *Massachusetts v. EPA*, which remains good law.

Like so many other EPA decisions, the proposed rescission of the endangerment finding will receive close attention. Public comments on the EPA proposal are due by Sept. 15, 2025, which will have to be reviewed and considered by the EPA. How long the EPA takes to review the public comments and issue a final action will be determinative in how quickly legal challenges to the rescission are lodged.

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