

October 19, 2020

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
Mail Code: 28221 T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Comments on “Control of Air Pollution From Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures.” Docket ID No. EPA–HQ–OAR–2018–0276.

Dear Administrator Wheeler:

On behalf of Life:Powered, an initiative of the Texas Public Policy Foundation, I want to express our opposition to the EPA’s current proposal to regulate greenhouse gas (GHG) emissions from airplanes and airplane engines.

While we understand the EPA’s need to respond to [potential litigation](#) and the possibility of more flawed and onerous rules being imposed in the future, those reasons do not justify promulgating a rule that is fundamentally flawed in the first place. By refusing to rebuke the regulation of aviation GHG emissions under the Clean Air Act (CAA), the only result of this rule will be to further drag out the arguments over the appropriate level of regulation. The EPA should tackle the task of overturning the flawed endangerment finding that underpins this rule, instead of further cementing that finding by promulgating this rule.

We think that finding is flawed for several reasons. First, it is not at all clear that Congress wrote [Section 231](#) of the CAA to allow for the possibility of regulating GHGs from aircraft. The law instructs the Administrator to determine “the extent to which [air pollutants from aircraft] affect air quality in air quality control regions throughout the United States.” This statement applies well to local forms of air pollution, such as particulate matter, but not to GHGs, which are nearly uniform in concentration throughout the atmosphere and are not directly harmful to human health. That initial language is later repeated in the instructions to hold multiple hearings “in air quality control regions which are most seriously affected by aircraft emissions.”

Given the lack of clarity in Section 231 on regulating GHGs, the EPA bases its endangerment finding on two premises. First, it argues that elevated concentrations of GHGs *on the whole* endanger the public health and welfare. Second, it notes that GHG emissions from aircraft contribute to this air pollution and therefore should be regulated pursuant to Section 231(a)(2)(A).

Whether and to what extent GHG emissions might endanger human health depends on the degree to which those emissions will alter global temperatures, a prediction which is still subject to a [wide degree of uncertainty](#), and the relative degrees of the harms and benefits of that temperature change. Quantifying the extent to which aviation GHG emissions—a small portion of total GHG emissions—

endanger human health with any degree of reasonable certainty is impossible given the current state of scientific understanding. As noted by [Bjorn Lomborg](#), climate models indicate that eliminating all aviation emissions between now and 2100 will reduce the rise in global temperatures by 0.03°C. Given that this change is a fourth as large as the error range of the commonly used [HadCRUT4](#) global surface temperature data set, this effect would likely not even be measurable.

While the EPA notes in its [2016 finding](#) that U.S. aviation, in 2010, accounted for 29% of global GHG emissions from aircraft, that share is declining. U.S. emissions also are declining more rapidly than any other major country, compromising a much lower global share when compared to 2010. Aviation GHG emissions also represent a small and declining share of overall U.S. transportation emissions, falling from 9.5% in 2005 to 8.9% in 2018. Therefore, the application of the 2009 endangerment finding for motor vehicles to aviation is suspect at best. The EPA must revisit the scientific basis for that finding before promulgating any further rules based on it.

It is also false to assume that the EPA must adopt the International Civil Aviation Organization (ICAO) standards in order for U.S. airline manufacturers to remain competitive and for U.S. airlines to fly internationally. Other options for compliance with the ICAO standards include an FAA rulemaking, if not guidance, that does not require the legal and scientific gymnastics of regulating GHGs under CAA Section 231, voluntary certification by U.S. companies (possibly with verification through a third-party for all U.S. and, more importantly, non-U.S. aircraft engines), as well as diplomatic and trade agreements. The EPA does not consider any of these less costly options in its rulemaking.

Another potential complication that is not mentioned in the proposed rule is the relevance of the ICAO's Carbon Offsetting and Reduction Scheme for International Aviation ([CORSIA](#)). This program may eventually require international aviation to be "net zero" with respect to GHG emissions through the use of carbon offsets. Notwithstanding whether this program could ever be implemented in an effective, verifiable manner and at a reasonable cost, the EPA does not have the authority to enter into an international carbon trading or offset program without the explicit permission of Congress. The EPA should clarify the limit of its authority and note that these standards do not imply or tend toward U.S. participation in the CORSIA program.

It is also important to note that [Section 231\(a\)\(2\)\(A\)](#) limits EPA's authority to "aircraft engines" and "aircraft engine emission standards," not to the entire aircraft. [Section 234](#) clearly references the statutory definitions from [U.S.C. 49 § 40102](#) of both "aircraft" and "aircraft engines," so Congress was not ambiguous on its use of the term "aircraft engines" in Section 231. If the EPA ultimately attempts to enforce a carbon offset program such as CORSIA, or any other non-engine-related standards, it would be clearly exceeding its regulatory authority under Section 231.

The EPA has also failed to prove that the rule will meet the Section 231 requirements that it "shall not change the aircraft engine emission standards if such change would significantly increase noise and adversely affect safety." There is no evidence that the EPA assessed the noise, safety, and local air quality consequences of the ICAO standards. This is especially problematic, as the [International Energy Agency](#), [Government Accountability Office](#), and numerous recent academic papers have noted the

likelihood that more stringent greenhouse gas or fuel efficiency requirements will elicit trade-offs with noise, safety, or local air pollution effects.

Finally, the EPA is wrong to retroactively adopt a start date of January 1, 2020, on the basis that no new plane designs have been filed since that time. We are not aware of a legal precedent for a federal agency to apply a start date that is prior to the implementation of a new regulation. This action violates the usual standards of fair notice and due process and is further evidence that this rule was rushed into existence without proper consideration of alternatives and regulatory impacts.

The flawed endangerment finding under Section 202, which [we have petitioned the EPA](#) to review and potentially repeal, should not be propagated to an even smaller and less significant subset of GHG emissions. Given the flaws mentioned in these comments and numerous others, we strongly encourage the EPA to rescind this rule in its entirety and to review and ultimately repeal the endangerment finding for GHG emissions from U.S. aircraft.

Sincerely,

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Texas Public Policy Foundation