



opening briefs is consistent with this Court's practice and is substantially lower than the word limits in other challenges to greenhouse gas regulations. The word counts for the other parties have been set accordingly.

**A. Background**

These consolidated petitions seek review of EPA's final action entitled *Control of Air Pollution from Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures*, published at 86 Fed. Reg. 2,136 (Jan. 11, 2021) ("Aircraft GHG Rule").

Section 231 of the Clean Air Act requires EPA to set standards to control emissions from aircraft engines that cause and contribute to air pollution that endangers public health and welfare. 42 U.S.C. § 7571. On August 15, 2016, EPA issued its *Finding That Greenhouse Gas Emissions from Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated to Endanger Public Health and Welfare*, 81 Fed. Reg. 54,422 (Aug. 15, 2016), triggering EPA's obligation to regulate greenhouse gas pollutants from aircraft engines in accordance with CAA section 231.

On January 11, 2021, EPA promulgated the Aircraft GHG rule. 86 Fed. Reg. 2,136. On January 15, 2021, the Environmental Petitioners, as well as eleven States and the District of Columbia, petitioned this Court for review of the Aircraft GHG Rule on the grounds, among others, that the rule's failure to reduce

greenhouse gas pollution, and EPA's failure to consider the technological feasibility of controlling greenhouse gas emissions from aircraft, violate Clean Air Act Section 231 and are arbitrary and capricious. *See* 42 U.S.C. § 7571; *id.* § 7607(b)(1).

On February 17, 2021, this Court put the case into abeyance to allow EPA to review the rule pursuant to President Biden's Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," instructing the parties to file motions to govern proceedings at the end of a six-month period. ECF 1885804. On August 16, 2021, EPA filed an unopposed motion to continue abeyance until November 15, 2021, which this Court granted. ECF 1911757. At the end of this period, the parties agreed to move the case out of abeyance. On December 2, 2021, this Court lifted abeyance and ordered the parties to submit proposed briefing formats by December 23, 2021. ECF 1925182.

**B. Joint Briefing Schedule and Format**

All the parties agree to the following proposed briefing schedule and format.

<b>Filing</b>	<b>Word Allocation</b>	<b>Deadline</b>
Administrative Record Index		Tuesday, January 11, 2022
Opening Briefs for States and Environmental Petitioners (two briefs)	18,000 words (shared across two briefs)	Monday, February 28, 2022

Briefs for Amici for Petitioners	6,500 words each	Monday, March 21, 2022
Brief for Respondents	18,000 words	Friday, May 6, 2022
Briefs for Respondent-Intervenors (filing jointly)	9,100 words for intervenors (filing jointly)	Friday, May 27, 2022
Briefs for Amici for Respondents	6,500 words each	Friday, May 27, 2022
Petitioner Reply Briefs (two briefs)	9,000 words (shared across two briefs)	Monday, June 27, 2022
Joint Appendix		Tuesday, July 5, 2022
Final Briefs		Tuesday, July 12, 2022

### **1. Number of Briefs**

Environmental Petitioners and State Petitioners request permission to file separate briefs. Although the two groups of Petitioners are coordinating with each other, they have different perspectives and interests in litigating this matter, plan to press different arguments on important issues, and have historically been granted leave to file separate briefs in similar cases. In support of this proposal, Petitioners assert the following:

State Petitioners include eleven States and the District of Columbia. These State Petitioners are home to over 100 million residents, who are already suffering the deleterious and escalating effects of climate change. State Petitioners have endured severe storms, wildfires, heatwaves, and droughts that have killed and displaced their residents and caused billions in damage to infrastructure, industry, and natural resources. Accordingly, State Petitioners have for years been pursuing legislative, regulatory, and judicial avenues to address greenhouse gas emissions. A lawsuit by certain States over a decade ago led the Supreme Court to rule that EPA must limit greenhouse gas emissions from motor vehicles if it found that the emissions endanger public health or welfare. *Massachusetts v. EPA*, 549 U.S. 497, 528-29, 533 (2007). The State Petitioners and their residents depend on EPA to perform its duty to set robust limits on aircraft greenhouse gas emissions because the Clean Air Act generally preempts States from establishing distinct standards for aircraft engine emissions.

Environmental Petitioners are three nonprofit organizations dedicated to protecting public health and the environment from increasingly dangerous climate change driven by greenhouse gas emissions. Collectively, they have over a million members throughout the country affected by the Aircraft GHG Rule. They have broad expertise in the legal, administrative, technical, environmental, and public health aspects of air pollution control. These organizations

participated extensively in 14 years of administrative and judicial proceedings that preceded the Aircraft GHG Rule, submitting comments at every stage. *See, e.g., Center for Biological Diversity v. E.P.A.*, 794 F. Supp. 2d 151 (D.D.C. 2011).

It is standard practice for the Court to allow governmental petitioners to file a separate brief from nongovernmental petitioners due to their sovereign and quasi-sovereign interests. *See, e.g., D.C. Cir. R. 28(d)(4)*. For example, the Clean Air Act's preemption of distinct state standards for aircraft emissions, and the impact of the Aircraft GHG Rule on States' programs to attain National Ambient Air Quality Standards, are matters on which State Petitioners have a unique perspective. The State and Environmental Petitioners raised distinct arguments to EPA in separate comments. Thus, consistent with D.C. Circuit Rule 28(d)(4), the Environmental Petitioners and State Petitioners each propose to file briefs in opposition to EPA. However, the petitioner groups have identified common issues where coordination will prevent overlap and are committed to working together to prevent duplicative briefing.

## **2. Schedule for Briefing**

This schedule is efficient and is designed to complete briefing in time to allow this Court to hold oral argument in the fall of 2022. All parties agree to the schedule.

The parties agree that Petitioners' opening briefs should be due on February 28, 2022, or 67 days after submission of this joint proposal. This briefing interval is commensurate with other complex, multi-party litigation in this Court and accounts for the intervening winter holidays. As discussed above, Petitioners include parties with diverse sets of interests, including eleven of the Nation's States and the District of Columbia. Petitioners need sufficient time to coordinate to avoid duplicative briefs and present the issues in this case as efficiently and effectively as possible under the word limits proposed. Moreover, EPA has not yet filed the Index of Record, and Petitioners will need adequate time to review the record in order to prepare their opening briefs.

In the interest of equity, all parties agree that EPA's principal brief be due on May 6, 2022, or 67 days after submission of Petitioners' opening briefs. This period also accounts for the necessary coordination and review within both EPA and the Department of Justice across multiple levels of management.

The parties also agree that Intervenors' joint brief should be due 21 days after EPA's brief. That interval will allow Intervenors Boeing and AIA to review EPA's brief and tailor their brief to avoid redundancy, as well as provide sufficient time for Intervenors to coordinate among themselves.

The parties further agree that Petitioners' reply briefs be due 52 days after EPA's brief and 31 days after Intervenors' briefs. This enlargement of the period

provided by Circuit rules is necessary to ensure that Petitioners can coordinate their reply briefs and have time to adequately respond to briefs of EPA, two Intervenors, and any amici curiae.

### **3. Proposed Word Allocation**

The parties to this submission agree that the total word limits set forth above are appropriate for the parties to address the issues raised in this case. The allocation to Petitioners of 18,000 total words for their opening briefs is consistent with this Court's practice and is substantially lower than the word limits in other environmental rule reviews involving greenhouse gas regulations. For example, this amount is substantially less than the 32,000 words allocated for opening briefs in the Affordable Clean Energy (ACE) Rule case,<sup>1</sup> the 26,000 in the Safer Affordable Fuel Efficient Vehicles (SAFE) Rule case,<sup>2</sup> and the 31,000 words in the challenge to greenhouse gas limits for new and modified power plants.<sup>3</sup> Divided between the Environmental and State Petitioners, the proposed limit would amount to a word allocation for each opening brief that is substantially below the normal limit of 13,000 words for principal briefs.

This word allocation is also reasonable given the technical nature of the

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<sup>1</sup> ECF #1826621 in *American Lung Ass'n v. EPA*, No. 19-1140 (Jan. 31, 2020).

<sup>2</sup> ECF #1843712 in *Union of Concerned Scientists v. Natl. Hwy. Traffic Safety Admin.*, No. 19-1230 (May 20, 2019).

<sup>3</sup> ECF #1632712 in *North Dakota v. EPA*, No. 15-1381 (Aug. 30, 2016).



Aircraft GHG Rule, the different interests and legal arguments of Environmental Petitioners and State Petitioners, and the need to discuss the international aviation standards set by the International Civil Aviation Organization, which EPA's Aircraft GHG Rule mirrors. Environmental and State Petitioners will coordinate their briefing to avoid duplication where their positions align. The proposed allocation of 18,000 words will thus allow the parties to fully brief these important issues without unnecessarily burdening the Court with duplicative or excessive briefing.

In the interest of equity and to allow EPA to fully respond to the arguments raised by the Petitioners, the parties agree that EPA also should be allocated 18,000 words for its principal brief. Intervenors' joint brief will adhere to the standard allocation of 9,100 words in accordance with Circuit rules.

Petitioners seek a combined allocation for reply briefs of 9,000 words. Divided between the Environmental and State Petitioners, the word limit for each brief is also below the normal limit for reply briefs under Circuit rules. It is reasonable given that Petitioners must respond to arguments raised separately by EPA and Intervenors.

Dated: December 20, 2021

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**CERTIFICATE OF SERVICE**

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure and Circuit Rule 25(c), I hereby certify that, on this 20<sup>th</sup> day of December 2021, I caused the foregoing **Joint Proposal for Briefing Format and Schedule** to be electronically filed with the Clerk of the Court by using the Court's CM/ECF system. All registered CM/ECF users will be served by the Court's CM/ECF system.

/s/ Sarah H. Burt  
SARAH H. BURT

## CERTIFICATE OF COMPLIANCE

1. Pursuant to Fed. R. App. P. 27(d)(2), I hereby certify that the Parties' **Joint Proposal for Briefing Format and Schedule** complies with the type-volume limitations. According to the word processing system used in this office, this document, exclusive the caption, signature block, and any certificates of counsel, contains 1,747 words.

2. Pursuant to Fed. R. App. P. 32(a)(5)-(6), I hereby certify that the Parties' **Joint Proposal for Briefing Format and Schedule** complies with the typeface requirements and the type-style requirements because it has been prepared in a proportionally spaced typeface in 14-point Times New Roman.

Dated: December 20, 2021

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