

**ORAL ARGUMENT NOT YET SCHEDULED**  
**Case No. 21-1018 (and consolidated cases)**

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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STATE OF CALIFORNIA, *et al.*

*Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY, *et al.*

*Respondents.*

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**CORRECTED BRIEF OF AMICUS CURIAE AIRLINES FOR AMERICA  
IN SUPPORT OF RESPONDENT UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

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**CERTIFICATE AS TO PARTIES, RULINGS UNDER REVIEW, AND  
RELATED CASES**

Pursuant to Circuit Rule 28(a)(1), the undersigned counsel of record certifies as follows:

**A. Parties**

**1. Petitioners**

The following parties appear as petitioners:

In case no. 21-1018: State of California (by and through Attorney General Rob Bonta and the California Air Resources Board), State of Connecticut, State of Illinois, State of Maryland, Commonwealth of Massachusetts, State of Minnesota, State of New Jersey, State of New York, State of Oregon, Commonwealth of Pennsylvania, State of Vermont, State of Washington, and the District of Columbia (together, State Petitioners).

In case no. 21-1021: Center for Biological Diversity, Friends of the Earth, and Sierra Club (together, Environmental Petitioners).

**2. Respondents**

The following parties appear as Respondents: the United States Environmental Protection Agency and Michael S. Regan, in his official capacity as Administrator of the U.S. Environmental Protection Agency (together, EPA).

### **3. Intervenors**

The following parties have intervened in support of Respondents: the Boeing Company and Aerospace Industries Association of America.

### **4. Amici**

Airlines for America has been granted leave to appear as amicus curiae in support of Respondents.

International Council on Clean Transportation; Mr. Thomas C. Jorling; and Service Employees International Union, Local 32BJ have been granted leave to appear as amicus curiae on behalf of Petitioners.

### **B. Ruling Under Review**

The State and Environmental Petitioners seek review of the final agency action by EPA entitled: “*Control of Air Pollution from Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures*,” published at 86 Fed. Reg. 2136 (Jan. 11, 2021) (“Aircraft Rule” or “Rule”).

### **C. Related Cases**

The final agency action at issue in this proceeding has not been previously reviewed in this or any other court. There are no related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

**RULE 26.1 DISCLOSURE STATEMENT FOR**  
**AIRLINES FOR AMERICA**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, amicus Airlines for America (“A4A”) submits the following disclosure statement:

A4A’s members are Alaska Airlines, Inc., American Airlines Group, Inc., Atlas Air, Inc., Delta Air Lines, Federal Express Corp., Hawaiian Airlines, Inc., JetBlue Airways Corp., Southwest Airlines Co., United Airlines Holdings, Inc., and United Parcel Service Co. Air Canada is an associate member.

A4A is a non-profit corporation representing the interests of commercial air carriers. A4A is the principal trade and service organization of the major scheduled U.S. air passenger and cargo carriers that serve domestic and international routes. A4A member carriers provide nearly 90 percent of all domestic commercial passenger and air cargo service, and provide international passenger and cargo service around the world. A4A members operate the aircraft and engines that are the subject of the Petitioner’s rulemaking challenge. As the trade organization of these carriers, A4A not only represents the interests of the U.S. commercial airlines, but also regularly participates in rulemakings and litigation that impact commercial air transportation in the U.S. and abroad.

A4A is a District of Columbia Corporation with its principal place of business in the District of Columbia. A4A has no parent corporation, does not issue

stock, and no publicly held company controls more than 10% of A4A. The fundamental purpose of A4A is to foster a business and regulatory environment that ensures safe and secure air transportation and enables U.S. airlines to flourish, stimulating economic growth locally, nationally, and internationally.

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**GLOSSARY OF ABBREVIATIONS**

A4A	Airlines for America
Aircraft Rule	Control of Air Pollution from Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures, 86 Fed. Reg. 2136 (Jan. 11, 2021)
CAA or “the Act”	Clean Air Act
EPA	U.S. Environmental Protection Agency
FAA	U.S. Federal Aviation Administration
GHG	Greenhouse gas(es)
ICAO	International Civil Aviation Organization
JA	Joint Appendix
MMT CO <sub>2</sub> eq.	Million Metric Tons of CO <sub>2</sub> Equivalent
NO <sub>x</sub>	Oxides Of Nitrogen
Section 231	Clean Air Act, 42 U.S.C. § 7571

## **STATUTES AND REGULATIONS**

Pertinent statutes and regulations not in Petitioners' or Respondent's addenda are reproduced in the Addendum following this brief.

## **STATEMENT OF IDENTITY**

Airlines for America (“A4A”) is the principal trade and service organization for the U.S. commercial airlines, representing the interests of the nation’s commercial passenger airlines and cargo carriers.<sup>1</sup> A4A regularly represents airlines’ interests in rulemakings and litigation affecting commercial air transportation. A4A’s mission is to advocate on behalf of its members to shape policies and measures that enable U.S. air carriers to provide safe, secure, and environmentally responsible passenger and cargo air service for the public, promoting sustainable economic growth throughout the U.S. and abroad.

A4A’s *amicus* brief is intended to assist the Court’s review by providing it with a crucial perspective – the Rule’s legal, technical, and practical impact on commercial air service.

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<sup>1</sup> A4A members are: Alaska Airlines, Inc., American Airlines Group, Inc., Atlas Air, Inc., Delta Air Lines, Federal Express Corp., Hawaiian Airlines, Inc., JetBlue Airways Corp., Southwest Airlines Co., United Airlines Holdings, Inc., and United Parcel Service Co. Air Canada is an associate member.

**STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTIONS**

Pursuant to Fed. R. App. P. 29(a)(4)(E), *amicus* A4A states that its counsel authored this brief. No party or counsel for a party contributed money intended to fund this brief's preparation or submission. No person - other than *amicus* A4A, its members, or its counsel - contributed money intended to fund this brief's preparation and submission.

## INTRODUCTION

This matter involves a challenge to an Environmental Protection Agency (“EPA” or “the Agency”) rulemaking adopting greenhouse gas (“GHG”) emissions standards for commercial aircraft engines. Petitioners challenge EPA’s Rule, *Control of Air Pollution From Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures*, 86 Fed. Reg. 2136 (Jan. 11, 2021) (“Aircraft Rule” or “Rule”), that sets forth emission standards promulgated under the Clean Air Act (“CAA” or “the Act”) statutory authority which EPA exercised in consultation with the Federal Aviation Administration (“FAA”) (collectively hereinafter “EPA,” unless otherwise specified); and fulfills international treaty commitments addressing the global challenge of climate change.

This brief highlights: (1) the market forces that further the Rule’s purpose; (2) this Court’s precedent regarding EPA’s application of CAA Section 231, 42 U.S.C. § 7571 (“Section 231”); (3) the Rule’s evolution, beginning during the Obama administration; and (4) statutory factors EPA appropriately considered within the global commercial aviation context – all of which support EPA’s promulgation of a Rule that is effective, necessary, economically reasonable, technologically feasible, and safe.

EPA has acted in a manner consistent with the CAA and with this Court’s precedent. Indeed, in *Nat’l Ass’n Of Clean Air Agencies v. EPA*, 489 F.3d 1221

(D.C. Cir. 2007) (“*NACAA*”), this Court upheld EPA’s aircraft emissions regulations that also incorporated international standards that the Agency had a lead role in developing into U.S. law – the same fact pattern as here. And, this Court rejected the same arguments Petitioners make here.

The Rule spotlights GHG emissions as a global problem requiring global solutions. This Rule is integral to a global GHG solution, because it: (1) fulfills U.S. binding treaty obligations; (2) enforces first-of-its-kind limits on aircraft engine GHG emissions; (3) fosters international engagement and cooperation critical to facilitating sustainable aviation; and (4) serves as a means of regulating aviation sector GHG emissions, advancing climate policy worldwide.

What is at stake here goes beyond a single U.S. regulation, and to the very core of international cooperation in GHG regulation and climate response. This Rule complements international standards adopted by the International Civil Aviation Organization (“ICAO”), the United Nations body charged with setting such standards under the Convention on International Civil Aviation (“Chicago Convention”). U.S. action here affects the viability of international aviation

regulation and other countries' perception of U.S. adherence to its legally binding treaty obligations.<sup>2</sup>

The Rule represents historic, first-ever, enforceable GHG standards applied to aircraft for *both* the U.S. and ICAO. The Rule establishes the foundation for pursuing additional future reductions in aircraft engine GHG emissions, while accounting for the interrelated factors of economic reasonableness, technological feasibility and safety associated with the aviation sector's unique nature. Indeed, EPA played a leading role in developing the international standards, ensuring they were structured to meet Section 231's requirements and could be incorporated into U.S. law. This Rule satisfies CAA statutory requirements while harmonizing GHG regulation with the 21<sup>st</sup> Century's fast-paced, evolving, multinational air commerce.

A4A is committed to advancing climate action<sup>3</sup> as the representative of the commercial aircraft operators that this Rule directly affects. None of this lawsuit's

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<sup>2</sup> A4A incorporates by reference Respondent's brief's references to the ICAO history and process.

<sup>3</sup> *Comments of Airlines for America and Air Line Pilots Association on Notice of Proposed Rulemaking on the Control of Air Pollution From Airplanes and Airplane Engines: Greenhouse Gas Emission Standards and Test Procedures* (Oct. 19, 2020) (EPA-HQ-OAR-2018-0276-0161) ("A4A Comments" at 2-4), JA\_\_\_\_; A4A testimony on the Proposed Rule. (Sept. 17, 2020) EPA-HQ-OAR-2018-0276-0115 ("A4A Testimony" at 1), JA\_\_\_\_.

other parties purchase fuel, acquire aircraft, fly and maintain planes, transport passengers and cargo, and shoulder the numerous other complexities that commercial air carriers must address while operating worldwide. These activities comprise the real-world context of providing safe and efficient commercial air service that the Rule must accommodate as it regulates GHG emissions.

A4A respectfully submits this brief setting forth the airline industry's perspectives and experience to place this Rule in its appropriate national and international context and to assist this Court in rendering its decision.

### **SUMMARY OF ARGUMENT**

In this litigation, Environmental and State Petitioners (hereinafter, collectively "Petitioners") claim that EPA has acted arbitrarily and adopted a Rule that violates the CAA. Petitioners' arguments, however, disregard the CAA's plain language and the extraordinarily broad discretion expressly afforded EPA under Section 231 to promulgate aircraft engine GHG emissions standards. In the exercise of that discretion, EPA has recognized that market forces related to aviation fuel costs drive technological advances and operational efficiencies that directly translate to minimized GHG emissions.

Petitioners argue that the Rule's emissions limits are less stringent than the Act requires, ignoring EPA's expressly delegated and expansive authority to enact aircraft engine regulations it determines to be appropriate. In fact, the Rule

represents a reasonable exercise of EPA’s rulemaking discretion under Section 231, especially in light of this Court’s ruling in *NACAA*. *NACAA*, 489 F.3d at 1230. (“Congress has delegated expansive authority to EPA to enact appropriate regulations applicable to . . . aircraft engines.”).

Petitioners incorrectly claim that Section 231 requires EPA to “force” new aircraft engine technology to achieve emissions reductions beyond those currently achievable. A plain reading of Section 231 reveals no such technology-forcing mandate. Indeed, the *NACAA* Court has already precisely so held. *Id.* 42 U.S.C. § 7571(a)(2)(B)(ii); (b).

The CAA’s statutory scheme underscores this conclusion. Section 231 sets forth a distinct approach for establishing *aircraft engine standards* that stands in stark contrast to the CAA’s technology-forcing provisions for *non-aircraft sources*.<sup>4</sup> Unlike the CAA’s non-aircraft provisions, Section 231 affords EPA the authority and discretion to set aircraft engine emission standards as the Agency determines to be “appropriate.” In making that distinction, Congress recognized

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<sup>4</sup> Compare Section 231, 42 U.S.C. § 7571(a)(2) and (3) (aircraft engine regulation) (EPA shall issue aircraft engine regulations from “time to time” as EPA “deems appropriate.”) with Sections 202 and 213, 42 U.S.C. § 7521(a)(3)(A); 42 U.S.C. § 7547(a)(3) (non-aircraft sources) (requiring the “*greatest degree of emission reduction achievable*,” accomplished “through the application of technology which the Administrator determines *will* be available.”) (emphasis added).

the unique nature of the aviation industry and associated aircraft engine emissions regulations.

Petitioners suggest that the Rule is meaningless for purposes of advancing climate action. That is not the case. Rather, the Rule signifies an historic first step in GHG regulation, the product of cooperative international negotiations with the U.S. global partners spanning three Presidential administrations. The Rule is part of a carefully considered approach to aviation emissions developed and negotiated at the ICAO under President Obama's administration, proposed under the Trump administration and now carried forward as part of the Biden administration's broad, multi-faceted initiatives to respond to climate change.

Petitioners challenge EPA's conclusions that: (1) in accordance with long-standing U.S. policy and treaty commitments; and (2) given the need for global climate action, it is appropriate and necessary under Section 231 to set the Rule's aircraft engine emissions standards consistent with ICAO aircraft emission standards. This challenge is misplaced. Consistency with ICAO standards factor into Section 231 regulatory authorities.<sup>5</sup> Moreover, the potential disruption to

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<sup>5</sup> EPA appropriately adopted ICAO aircraft standards in regulating aircraft engines under Section 231 given the direct, linear relationship between GHG engine emissions and fuel efficiency of aircraft as a whole. A4A Comments, at 7 nn.23 & 24, JA\_\_\_\_.

international aviation and to the U.S. role in international standard-setting initiatives, should the U.S. depart from ICAO standards, compel the conclusion that harmonization with ICAO standards should be a critical rulemaking consideration.

Finally, Petitioners claim EPA's Rule equates to doing nothing. To the contrary, EPA has: (1) promulgated a Rule that establishes a first-of-its-kind regulatory structure that limits aircraft engine GHG emissions and provides the foundation for increasingly stringent regulations in the future; (2) foreclosed the introduction of new aircraft engine types unless the applicable standard is met; and (3) set a cut-off for new in-production airframe/engine combinations unless the applicable standard is met, consistent with EPA's precedents for establishing aircraft engine standards. Significantly, the next steps are already in progress at the international and domestic levels for continued step-wise commercial aviation sector GHG regulation.

## **ARGUMENT**

### **I. U.S. COMMERCIAL AIR CARRIERS HAVE A STRONG RECORD OF LIMITING GREENHOUSE GAS EMISSIONS**

U.S. commercial air carriers understand and embrace the need for global climate action so the aviation sector can continue to grow sustainably. This requires commercial air carriers to address climate change proactively. And they do.

**A. U.S. Commercial Air Carriers Are Committed To Advancing Climate Action Proactively**

In 2021, A4A significantly strengthened its long-standing climate commitments, setting: (1) a long-term goal to reduce net carbon emissions to zero by 2050; and (2) a mid-term goal of making 3 billion gallons of sustainable aviation fuel available to U.S. airlines in 2030. U.S. Airlines Announce 3-Billion-Gallon Sustainable Aviation Fuel Production Goal, available at <https://www.airlines.org/news/u-s-airlines-announce-3-billion-gallon-sustainable-aviation-fuel-production-goal>; A4A Climate Commitment and Flight Path – Innovative Industry and Government Action to Achieve Net-Zero Carbon Emissions (Mar. 30, 2021), available at <https://tinyurl.com/2p8etw2n>.

These commitments continue the airlines' long-standing recognition that the industry will not be able to grow unless it grows sustainably. Well before the instant Rule was proposed, A4A adopted ambitious measures to reduce its collective GHG emissions. Since 2009, on behalf of the commercial airline industry, A4A has been an active participant in a global aviation coalition that committed to fuel efficiency improvements, carbon-neutral growth, and a reduction in CO<sub>2</sub> emissions. A4A Comments at 3, JA\_\_\_\_. A4A remains committed to advancing climate action under ICAO and as part of collective efforts to coordinate climate policy under the United Nations Framework Convention on Climate Change and the Paris Agreement. *Id.*

This proactive approach to ensure the sustainability of aviation operations supports the nation's critical climate goals while also providing for the traveling and shipping public's demand for air transportation services.

In keeping with its commitment to proactively addressing climate change, A4A actively participated in the instant Rule's development. A4A Comments at 1-15, JA\_\_\_\_\_.

**B. The U.S. Aviation Sector Continues to Make Significant Progress in Fuel Efficiency, Minimizing GHG Emissions**

Fuel historically being the airlines' highest or second highest cost center, economics have incentivized commercial air carriers to dramatically improve fuel efficiency over the last 40 years. This is important in this context because aircraft fuel efficiency translates directly to aircraft engine GHG emissions reductions. Commercial aviation has continually reduced GHG emissions for passengers and cargo operation significantly. Since 1978, U.S. airlines improved fuel efficiency by 135 percent, resulting in over 5 billion metric tons of CO<sub>2</sub> savings over 40 years – equivalent to taking more than 27 million cars off the road in *each of those years*. A4A Comments at 3, JA\_\_\_\_\_. Further, U.S. airlines improved their fuel- and CO<sub>2</sub>-emissions efficiency by 40 percent between 2000 and 2019. *Id.*

In 2019 (pre-COVID-19) commercial aviation emissions were *lower* than commercial aviation sector's emissions in 2000, by 5 million metric tons of carbon

dioxide equivalent (MMT CO<sub>2</sub>eq.),<sup>6</sup> even as the aviation sector's revenue ton miles grew 39% over that 2000-2019 period. This occurred as A4A members were transporting a record 2.5 million passengers and 58,000 tons of cargo per day in 2019.<sup>7</sup> A4A Comments at 3, n.9, JA\_\_\_\_.

U.S. aviation's GHG emissions savings have required large investments in new technology. Working with aircraft and engine manufacturers as well as the FAA, the commercial aviation sector has invested billions to develop and acquire: (1) fuel-saving aircraft and engines; (2) innovative technologies; (3) sustainable

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<sup>6</sup> EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2019, Table A-104, A-205-06. Available at: <https://www.epa.gov/sites/default/files/2021-04/documents/us-ghg-inventory-2021-annexes.pdf>. *Id.* Table A-104, A-186-87. Commercial aviation's 2019 emissions were 135.4 MMT CO<sub>2</sub> eq. versus 140.6 MMT CO<sub>2</sub>eq. in 2000. *Id.* In 2019, emissions from international operations (which are not included in the GHG Inventory) amounted to about 78.4 MMT CO<sub>2</sub>eq. Available at: <https://www.epa.gov/sites/default/files/2021-04/documents/us-ghg-inventory-2021-main-text.pdf>. *Id.* Table 3-104. In 2020, emissions from commercial aviation fell to 92.1 MMT CO<sub>2</sub>eq. while emissions from international aviation dropped to 37.1 MMT CO<sub>2</sub>eq. <https://www.epa.gov/system/files/documents/2022-04/us-ghg-inventory-2022-annexes.pdf>; and EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2020, Tables A-98 and 3-104. Available at: <https://www.epa.gov/system/files/documents/2022-04/us-ghg-inventory-2022-main-text.pdf>.

<sup>7</sup> Bureau of Transportation, Statistics Form 41, Schedule T-100, available at <https://www.bts.gov/browse-statistical-products-and-data/bts-publications/data-bank-21-form-41-schedule-t-2-t-100>.

aviation fuel;<sup>8</sup> and (4) cutting-edge route-optimization software and navigation systems. These initiatives generated results. The U.S. aviation sector has responsibly and effectively focused on fuel efficiency, limiting GHG emissions, and minimizing potential climate impacts, while allowing commercial aviation to continue to serve as a key contributor to the economy and the public's interest in having safe and affordable air travel.

Thus, market forces related to aviation fuel efficiency propel aircraft engine technological and operational efficiencies, progressively reducing GHG emissions. In setting the Rule's fuel economy metric to regulate aircraft engine GHGs, EPA appropriately considered these market forces as a legitimate factor in developing the Rule. 86 Fed. Reg. at 2138, 2139, 2142, 2169, JA\_\_\_\_.

## **II. THIS COURT, IN NACAA, HAS ALREADY REJECTED ALL OF THE ARGUMENTS PETITIONERS MAKE HERE**

The CAA expressly grants EPA broad rulemaking discretion under Section 231, as this Court found in *Nat'l Ass'n Of Clean Air Agencies v. EPA. NACAA*, 489 F.3d at 1230, 1232. ("Congress has delegated expansive authority to EPA to enact appropriate regulations applicable to . . . aircraft engines.... and [the rule] is supported by reasoned decision making warranting our deference."). In fact, this Court has already agreed with EPA's Section 231 interpretation in the context of

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<sup>8</sup> Commercial Aviation Alternative Fuels Initiative®, <http://caafi.org/>.

aircraft engine emissions. *Id.* at 1230. (finding EPA “has greater flexibility under section 231 in determining what standard[s are] most reasonable for aircraft engines.”). *NACAA* and the present case are essentially on all fours. Both cases involve challenges to EPA’s domestic aircraft engine emissions regulations under Section 231, which adopted ICAO aircraft standards.

Petitioners in *NACAA* challenged EPA’s final aircraft engine emissions standards for oxides of nitrogen (“NO<sub>x</sub>”). *Id.* at 1224. EPA’s regulation required a 16% NO<sub>x</sub> emissions reduction, mirroring ICAO’s NO<sub>x</sub> emission standard. *Id.* In so doing, EPA recognized that the new standards would “not impose any additional burden on manufacturers,” because “94 percent of all engine models currently in production already meet the[se] standards.” *Id.* at 1225. EPA also acknowledged “[m]ore stringent standards . . . will likely be necessary and appropriate in the future.” *Id.* EPA concluded:

“[I]n the interests of expediency and of bringing U.S. domestic law into conformity with . . . obligations under the Chicago Convention . . . the most appropriate course for now . . . is to simply update [EPA] regulations to track [the 1999 ICAO standards] in terms of both stringency levels and scope of applicability.”

*Id.* at 1226.

*NACAA* Petitioners made the same arguments Petitioners make here – but this Court rejected each and every one. First, as in our case, the *NACAA* Petitioners claimed that EPA’s Section 231 reading was an “impermissible construction” of

the CAA. *Id.* at 1224. This Court rejected that argument and agreed with EPA that, when Congress enacted Section 231 providing that the Administrator could “from time to time” act “in his judgment” as “he deems appropriate,” it gave EPA “both explicit and extraordinarily broad” . . . “authority to weigh various factors in arriving at appropriate standards.” *Id.* at 1229. The *NACAA* Court found it reasonable for EPA to give greater weight to non-emissions considerations in this context than it might in “balancing emissions reduction . . . factors under other [CAA] provisions.” *Id.* at 1230.

Second, as in our case, Petitioners in *NACAA* claimed Section 231 mandated a “technology-forcing” approach to aircraft engine emissions regulations. *NACAA* at 1223. This Court rejected this argument, noting that, while other CAA provisions for non-aircraft sources require EPA to obtain the “greatest degree of emission reduction achievable,” Section 231 does not contain such language. *Id.* at 1230. Rather, Section 231 gives EPA “greater flexibility” to determine what standards are “most reasonable for aircraft engines.” *Id.*

More precisely, the CAA’s statutory scheme has distinct provisions for establishing *aircraft* engine standards that stand in stark contrast to the technology-forcing provisions for *non-aircraft mobile sources* (e.g. onroad and nonroad engines and vehicles) set forth elsewhere in the CAA. The CAA addresses aircraft engine emission standards in Section 231-234, a discrete Part of Title II, titled

“*Part B: Aircraft Emissions Standards.*” 42 U.S.C. §§ 7571-74. This section of the Act is dedicated solely to aircraft engine regulation. Section 231 is separate and distinct from the CAA’s sections addressing *non-aircraft mobile sources*. CAA Title II addresses non-aircraft mobile sources in Part A, Sections 202 and 213. 42 U.S.C. § 7521(a)(3)(A)(Motor Vehicles); 42 U.S.C. § 7547(a)(3)(Nonroad Engines and Vehicles).

In contrast to the CAA’s aircraft engine provisions, the non-aircraft provisions require technology-forcing standards. The non-aircraft standards require the “greatest degree of emission reduction achievable,” accomplished “through the application of technology which the Administrator determines will be available.” *Id.*; *NACAA*, 489 F.3d at 1230. This Court has repeatedly interpreted these CAA non-aircraft mobile source regulations as “technology-forcing.” *See, e.g., Bluewater Network v. EPA*, 370 F.3d 1, 20 (D.C. Cir. 2004); *Sierra Club v. EPA*, 325 F.3d 374, 378 (D.C. Cir. 2003); *Husqvarna AB v. EPA*, 254 F.3d 195, 201 (D.C. Cir. 1999). But that is not the case for Section 231. The *NACAA* Court spoke directly to this issue:

Thus the Final Rule reasons, EPA “is not required to achieve a ‘technology forcing’ result” . . . Nor does the Final Rule “interpret the Act as requiring the agency to give subordinate status to factors such as cost, safety, and noise . . . Rather, it concludes that EPA “has greater flexibility under section 231 in determining what standard[s are] most reasonable for aircraft engines.”

*NACAA*, 489 F.3d at 1230.

Third, as in our case, Petitioners in *NACAA* argued that EPA's regulation was impermissible because it "will not actually effect an emissions reduction." *Id.* at 1230. This Court also rejected this argument for all the same reasons set forth above, holding that it "need not find that [this interpretation] is the only permissible construction that EPA might have adopted but only that EPA's understanding of this very complex statute is not manifestly contrary to the CAA." *Id.* (quoting *Chem. Mfrs. Ass'n v. NRDC*, 470 U.S. 116, 125 (1985)). The *NACAA* Court agreed with EPA's interpretation of Section 231, finding as reasonable EPA's approach to adopt the ICAO NO<sub>x</sub> emission standards into domestic regulations. *Id.* at 1225 (recognizing that EPA "does not regulate on a blank slate.").

Here, Petitioners make all of these same arguments. This Court should reject those arguments for the same reasons set forth in *NACAA*.

Indeed, it is the telling weakness of the Petitioners' argument that they only address *NACAA* as an afterthought in their briefs. Petitioners argue that *NACAA* is distinguishable because the standards in that case were subject to an ongoing phased approach, stating that the "lack of further, pending standard-setting proceedings, distinguishes this case from [*NACAA*]." State Pet. Br. at 28, n.43. This argument fails because, as the Act provides, this Rule *will be* subject to

further, standard-setting proceedings from “time to time.” *NACAA*, 489 F.3d at 1229. As noted below, ICAO is considering updated aircraft GHG emission standards in its next work cycle. Resp. Br. at 21 n.14.

Petitioners also attempt to distinguish *NACAA* by arguing that, although the *NACAA* Court upheld EPA’s balancing of Section 231 factors there, EPA did not balance such factors here. Env. Pet. Br. at 32, 40. This is simply incorrect. EPA evaluated and balanced Section 231’s economic reasonableness, technological feasibility, noise and safety factors. 86 Fed. Reg. at 2156, JA\_\_\_\_. These CAA factors are reflected in ICAO’s four “terms of reference,” justifying harmonizing the Rule with ICAO’s standards.<sup>9</sup> *Id.* at 2141, JA\_\_\_\_. Petitioners concede that under *NACAA*, “EPA has discretion to consider extra-statutory factors” and that “an interest in international harmonization can ... play a [] role in a reasoned application of statutory factors.” Env. Pet. Br. at 32; State. Pet. Br. at 31.

### **III. THE GLOBAL PROBLEM OF GHG EMISSIONS REQUIRES GLOBAL SOLUTIONS AND EPA CORRECTLY ESTABLISHED THE RULE WITHIN THAT CONTEXT**

The regulation of GHGs generally, and aircraft engine GHG emissions in particular, is unique and challenging in important respects that are critical to

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<sup>9</sup> ICAO applies four terms of reference for aircraft emission standards analysis: (1) technologically feasible; (2) economically reasonable; (3) environmentally beneficial; and (4) interdependence of measures (e.g. between emissions and noise).

understanding this regulation's reasonableness. The global problem of GHG emissions requires worldwide cooperation within the international aviation regulatory framework. Thus, it is not only appropriate for EPA to take into account the U.S. ICAO obligations, but it is an absolute necessity for the U.S. to work in concert with its global partners as part of any meaningful global climate solution.

**A. The Rule Is Part Of A Global Solution To A Global Problem**

GHG emissions, by their nature, must be evaluated in the context of the global GHG emission inventory. Unlike other "exposure" type pollutants, such as NO<sub>x</sub> or particulate matter, GHGs are of concern not because of any immediate human health impacts related to air quality. Rather, GHGs are an issue because of their global climate impacts over time and the derivative consequences on human health and welfare that follow. Further, GHG emissions contribute to the global climate problem, regardless of when or where they are created.

Thus, absent binding global standards and enforcement, one nation's actions alone, however well-intended, will fall well short of a solution. Indeed, every bit as important as the adoption of standards is cooperation in a global forum, like ICAO, that brings nations together in a common effort to address climate change. For that reason, and as this Court has held, how the domestic agenda accounts for international regulatory efforts is a legitimate factor in EPA's rulemaking. *NACAA*, 489 F.3d at 1225.

With regard to GHG regulation, that is all the more so. This first-ever aircraft GHG regulation differs from non-aircraft GHG emissions standards in that it complements and implements the global regulatory framework ICAO has developed to limit GHG emissions. A reasoned approach to EPA's analysis under Section 231, therefore, is one that addresses impacts uniformly, consistent with the global nature of aviation operations.

**B. EPA Acted Reasonably In Developing The Rule As Part Of ICAO Under Chicago Convention Treaty Obligations**

This Rule is distinct from many other U.S. regulations in that it substantively mirrors ICAO standards developed through the international process governed by and carried out in accordance with the Chicago Convention, an international treaty to which the U.S. is a Party. ICAO's 2017 CO<sub>2</sub> Certification Standards ("ICAO Aircraft Standards") are part of international aviation's system of uniform, reciprocally-recognized enforceable standards governing aircraft operations. This structure is required because aviation is a global industry and aircraft regulated under the Rule are operated globally, often transiting multiple countries in a single day.

ICAO develops aircraft standards through a technical committee, whose mission, by definition, is environmental protection, i.e., the Committee on Aviation Environmental Protection. Along with the world's leading aviation emissions and technology experts, the Committee's broad-based membership includes federal

government agencies, non-governmental organizations, and aviation industry delegations.

From 2009 to 2016, under President Obama, the FAA served as this Committee's U.S. Member, with the State Department and EPA serving as key advisors. A4A participated directly in every aspect of the Committee's eight-year process to develop the ICAO Aircraft Standards as part of an aviation industry delegation. EPA, FAA, and the State Department's active participation in the intense, multi-year effort within ICAO led to agreement on a well-reasoned and enforceable global standard aligned with CAA principles. 86 Fed Reg. at 2140, JA\_\_\_\_. Contrary to Petitioners' claims, EPA has promulgated this Rule incorporating these technologically sound ICAO standards, based on nearly a decade of rigorous analysis.

Indeed, the terms of reference that the Committee considers in developing aircraft emissions standards - including technological feasibility, economic reasonableness, environmental necessity, and the interdependence of measures (e.g. safety and noise impacts) align with Section 231 requirements for such standards.<sup>10</sup> The Committee's analysis of these terms of reference is, not

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<sup>10</sup> 42 U.S.C. § 7571(b) (permitting "the development and application of the requisite technology, giving appropriate consideration to the cost of compliance.");

coincidentally, directly related to the deliberations that EPA must make when establishing aircraft emission standards under Section 231. Section 231 is structured in a manner that allows EPA to closely coordinate with the international aviation community in parallel with its domestic deliberations.

Once approved and adopted by ICAO, Member States, like the U.S., are obligated to adopt standards that are at least as stringent as the international standard through their domestic law. 86 Fed. Reg. at 2140, JA\_\_\_\_. EPA followed this practice here. *Id.* at 2144, JA\_\_\_\_. Thus, unlike most other U.S. rulemakings with limited global reach, the regulatory structure undergirding the Rule is part of ICAO's binding international regulatory regime, ensuring a global approach to regulating a global industry to address this global problem.<sup>11</sup>

And the process does not stop there. Rather, the Committee's GHG evaluation is iterative. At the Committee's most recent meeting, the U.S. proposed and the Committee agree to "the integrated development of more stringent" CO2 and noise standards for ICAO adoption in 2025. Resp. Br. at 20-21, nn.13 & 14. *Id.* at 21, n.14. This illustrates the Rule's importance, by *already* providing the

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42 U.S.C. § 7571(a)(2)(B), (a)(3); (c) (requiring that EPA cannot change aircraft engine standards if such changes affect noise and safety).

<sup>11</sup> *Wardair Canada Inc. v. Fla. Dep't of Revenue*, 477 U.S. 1, 9–10 (1986) (“[B]y virtue of being a party to” the Chicago Convention [ ], the United States is a member of [ICAO].”).

foundation for the U.S. to push for, and the international community to agree to, developing more stringent aircraft standards. Without this existing regulation and the technical, legal and policy precedent, no such progress could be achieved.

Thus, it was entirely appropriate for EPA to look to ICAO action as a reasonable first step in the Agency's domestic regulation for aviation sector GHG emissions. Despite this, Petitioners discount the global ICAO agreement, demanding that EPA go forward with aircraft emissions regulation without regard to ICAO. Env. Pet. Br. at 21. A4A submits it would be *unreasonable* for EPA to ignore the common efforts of ICAO's 193 countries working "to collaborate in securing the highest practicable degree of uniformity" in regulations regarding GHG emissions limits on an international scale. *Convention on International Civil Aviation*, art. 37, Dec. 7, 1944, 61 Stat. 1180, 15 U.N.T.S. 295, JA\_\_\_\_.

**C. The U.S. Has Taken Consistent Actions Over Three U.S. Administrations**

The ICAO Aircraft Standards negotiations began in 2009 during President Obama's administration, with the Rule's development now spanning three administrations. The Rule was developed as a product of extensive outreach, research, and negotiation during the Obama administration. These Obama

administration standards were formally proposed under the Trump administration in 2020 and adopted domestically in 2021. A4A Comments, at 1 n.2, JA\_\_\_\_.

After careful review, the Biden administration determined to finalize the Rule as part of the President’s comprehensive, “whole-of-government” approach to climate action across all agencies, and industry sectors. Executive Order No. 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, 86 Fed. Reg. 7037 (Jan 21, 2021).

Under this whole-of-government approach, EPA’s decisions with respect to rulemaking priorities are critical to the President’s meaningful agenda to implement climate action, both domestically and as part of the broader global effort. As such, the Agency should be afforded the discretion required to address aircraft emissions integral to a coherent and broad-based effort responding to the climate challenge.

**D. Aircraft Emission Regulation Involves Issues of U.S. Foreign Policy And International Law**

**1. Consistency With Precedent**

In expressing U.S. support for ICAO’s regulatory process, the Executive Branch acted consistently with past practice and with its considerable discretion and judgment regarding such policies. *Harlow v. Fitzgerald*, 457 U.S. 800, 812 n.19 (1982) (conducting foreign affairs is a “‘central’ Presidential domain.”); *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 320 (1936) (foreign

affairs power is “the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations”).

Significantly, EPA has conformed the development of nearly every U.S. aircraft emissions rule to ICAO standards since EPA and ICAO began adopting such emission standards over 40 years ago. 86 Fed. Reg. at 2142, JA\_\_\_\_. In so doing, EPA has acted consistent with U.S. foreign policy, treaty obligations and interests, and in a reasonable manner under Section 231.

## **2. Necessity Of Global Action**

The Rule represents a meaningful limit on aircraft emissions within a cooperative global response to a global problem. Although the Rule applies only to aircraft engines manufactured in the U.S., its promulgation directly implicates ICAO’s ongoing viability to set global consensus standards on safety, security, environmental, air traffic, and other parameters that allow both international aviation to function and effective U.S. leadership within the ICAO process. Critically, as the Committee addresses other issues, e.g., the continued re-evaluation of these emission standards’ stringency at the international level, the U.S. will be an active participant in those efforts. Acting alone, U.S. GHG regulatory measures may prove insufficiently effective in scope and size to address climate change. Acting in concert with 192 other countries to adopt enforceable

consensus standards, however, there is a path forward to solving this global climate challenge.

### **3. The Unique Nature Of International Air Commerce**

The unique nature of modern aviation is such that aircraft GHG regulation cannot simply be a matter of domestic U.S. regulation. Unlike non-aircraft mobile sources, U.S. aircraft enter other countries' airspace hundreds of times a day, subjecting themselves to the regulatory jurisdiction of multiple foreign authorities. As the U.S. government recognized over 70 years ago upon joining the Chicago Convention, international aviation simply could not function under a patchwork of individual countries' aviation standards. Thus, in this rulemaking, EPA correctly weighed the interconnected international nature of the aviation industry's operations under the Rule and the necessity of global uniformity.

### **4. Promoting A Level Playing Field**

Aligning domestic and global aviation regulation is critical to promoting a level playing field. Adopting the ICAO Aircraft Standards into U.S. law ensures U.S.-manufactured aircraft and engines are available to U.S. airlines, while fostering global competition and enabling airlines to acquire aircraft and aircraft engines at market-driven, competitive prices. A4A Comments at 2, JA\_\_\_\_. Compliance with international standards (via FAA type certification) is an important consideration in airlines' purchasing decisions. *Id.* at 9, JA\_\_\_\_.

Domestic adoption of ICAO standards ensures that the engines U.S. air carriers need for their aircraft can obtain FAA certification, while also ensuring use of those engines is accepted in international commerce. *Id.* at 9, JA\_\_\_\_. As EPA notes, “other ICAO member states that certify airplanes” have already adopted the ICAO CO2 Aircraft Standards. *Id.* at 2, JA\_\_\_\_; *Id.* at 9, n.32, JA\_\_\_\_. Thus, the Agency needed to act to put U.S. aircraft and aircraft engine manufacturers on the same footing as their foreign counterparts. A4A Comments at 2, JA\_\_\_\_.

Notably, the U.S. aviation industry largely drives the technological improvements that make future reductions in GHG emissions possible both domestically and internationally. Accordingly, it was reasonable for EPA to adopt a rule that preserves the current competitiveness of the U.S. airline industry and prevents the risk of it shifting overseas. Much of the growth in the aviation sector’s GHG emissions will come from countries like China and India, whose environmental agendas are frequently driven more by economic expediency than a commitment to global climate solutions. As this Court has recognized, in promulgating a domestic aircraft emissions rulemaking, it is appropriate to consider all reasonable factors that will advance the Rule’s objectives. *NACAA*, 489 F.3d at 1225.

In sum, the Rule is fundamental to a global climate solution, as it fits into the U.S. national strategy, while addressing GHG emissions through the lens of the entire global climate change problem.

#### **IV. EPA REASONABLY RECOGNIZED THE UNIQUE NATURE OF THE AIRLINE INDUSTRY**

Aircraft technology and operations are uniquely complex, and this complexity presents significant threshold issues of practicality, feasibility, and safety that the EPA must weigh throughout the regulatory process. Here, EPA appropriately balanced such considerations in its final Rule.

##### **A. The Rule Must Be Economically Reasonable**

Section 231 requires EPA to consider costs. 42 U.S.C. § 7571(b). From an economic perspective, the Rule provides: (1) certainty within the aviation industry to project aircraft orders and operational needs; and (2) ensures the competitiveness of U.S. airlines in the global aviation sector.

Consistent with Section 231's language and intent, the Rule recognizes the need for an economically viable aviation industry to preserve air carriers' ability to acquire the most fuel-efficient aircraft available from U.S. aircraft and engine manufacturers. The Rule's uniformity with ICAO Standards is vital given international aviation's connectivity, where U.S. aircraft enter the airspace and operate at airports in other countries hundreds of times per day. Global commercial

aviation and the international airspace system simply could not function if aircraft were subject to a patchwork of disparate national regulatory standards.

The Rule also recognizes the importance of maintaining the U.S. commercial aviation industry's economic viability and competitiveness as an important and legitimate objective of the Rule. A4A Comments at 1, 2, JA\_\_\_\_. As noted, the U.S. commercial aviation sector largely drives the most significant technology and operational improvements that make possible future GHG emissions savings. The Rule meets the Section 231 requirement of economic reasonableness because it provides for a healthy U.S. commercial aviation sector that will fund and acquire the next generation of energy efficient aircraft.

**B. The Rule Must Be Technologically Feasible**

Section 231 requires EPA to consider technological feasibility. 42 U.S.C. § 7571(2)(b). From a technical perspective, EPA must be afforded the latitude to make reasoned determinations with respect to technological feasibility and related potential environmental interdependencies in setting aircraft engine emissions standards. The statutory scheme therefore affords EPA the discretion to account for technological complexities in developing aircraft engine emissions parameters for pollutants, including GHGs. The feasibility of a new design must take into account a variety of other interrelated considerations and costs for the same. The statute specifically requires the EPA to allow enough lead time “to permit the

development and application of the requisite technology” explicitly contradicting Petitioners’ claim that EPA must adopt technology-forcing standards.

Petitioners suggest the Rule should incorporate design specifications. Env. Pet. Br. at 9. However, CAA Sections 231-234 do not contemplate design through rulemaking. *See* 42 U.S.C. § 7571(a)(2)(A) (“The Administrator shall issue proposed *emissions standards* applicable to . . . aircraft engines”) (emphasis added). While EPA’s performance-based emissions standard here incorporates characteristics of airplane design as adopted by ICAO, the EPA is not asserting “independent regulatory authority over airplane design.” 86 Fed. Reg. at 2143. JA\_\_\_. EPA’s position is well-reasoned and avoids the problematic nature of having those outside the realm of expertise in commercial aircraft operation and airframe design and manufacture mandate the same.

Thus, technological feasibility does not simply mean that the technology itself has been developed, as Petitioners suggest. Env. Pet. Br. at 11. Rather, EPA’s prior regulatory experience has demonstrated that aircraft engine regulation requires consideration of interrelated factors, as further detailed in Section D below. For example, the redesign of an aircraft engine to address one pollutant may undermine existing design and operational parameters that have been adopted to reduce other pollutants or noise. A4A Comments at 2, JA\_\_\_\_\_.

### **C. The Rule Must Consider Safety**

EPA's analysis of safety considerations at any stage of the regulatory process must be a priority when introducing new aircraft engine standards. 42 U.S.C. § 7571(a)(2)(B), (a)(3); (c). While Section 231 authorizes EPA to adopt or revise aircraft engine emissions regulations "from time to time," it expressly mandates that EPA shall "not change the standards if such change would significantly increase noise and adversely affect safety." *NACAA*, 489 F.3d at 1224-25; 42 U.S.C. § 7571(a)(2)(B), (a)(3); (c). This ensures emissions standards reflect what aircraft technologies can safely deliver, again explicitly contradicting Petitioners' claim EPA must adopt hypothetical technology-forcing standards that have yet to be proven safe.

The provision also underscores how complex and unique aircraft are in their design and operation. The technological feasibility of controlling any pollutant, including GHGs, is critically important in the context of aviation regulation, given the overarching priority of air safety. Put in the simplest terms, a commercial aircraft flying 35,000 feet above the ocean cannot "pull over to the side of the road" if there is an engine problem. Absolute reliability and performance is not merely a matter of convenience, but essential for safety of passengers, aircraft crew and individuals on the ground.

#### **D. Interdependencies Increase The Complexity Of Aviation Sector Regulation**

The development of new environmentally effective technology standards for aircraft is extremely complex. The standards must not only be economically reasonable, technologically feasible, and safe, but also consider these factors' interdependences. In other words, all of these objectives must be attained within a context wherein different technologies and impact reduction strategies may have countervailing effects. For example, technologies that reduce noise may add weight to an aircraft, compromising fuel efficiency; technologies that reduce one pollutant emissions type (e.g., NOx) may also reduce fuel efficiency (increasing GHG emissions). All of these interrelated factors must be balanced, as EPA did here.

#### **V. THE RULE LIMITS AIRCRAFT ENGINE EMISSIONS**

Petitioners contend the Rule is the “equivalent to doing nothing at all.” State Pet. Br. at 4. To the contrary, with this first-ever aircraft engine GHG Rule, EPA makes progress. First, the Rule establishes a regulatory foundation for requirements restricting GHG emissions from aircraft engines. *Cf. Chicago, v. Env't'l Def. Fund*, 511 U.S. 328, 338 (1994) (finding it is not “nothing” for EPA to codify a rule). Additionally, the Rule forecloses the introduction of new type and certain in-production aircraft engines that would not meet those requirements.

Having made these formal regulatory determinations, EPA holds the aviation industry to a standard that precludes it from backsliding.

Building on this foundation, the Rule commits aircraft engines subject to the Rule to the most appropriate technology available, a well-reasoned approach previously taken by the Agency. Moreover, EPA issued the Rule understanding its importance to enabling future, more stringent regulation under Section 231. 42 U.S.C. § 7471(a)(2)(A) (EPA will revisit emissions standards for aircraft engines “from time to time.”); *NACAA*, 489 F.3d at 1230. These actions reflect EPA’s past practice in issuing regulations and testing requirements consistent with ICAO for aircraft noise and emissions including: NO<sub>x</sub>, carbon monoxide, hydrocarbons and smoke. 86 Fed. Reg. at 2138. As discussed in detail above, continued step-wise regulation is already in motion.

In sum, the Rule makes progress for GHG regulation not only in the U.S. aviation sector, but for climate action worldwide.

## **VI. CONCLUSION**

For the reasons set forth herein, A4A hereby respectfully submits that the Petitions for review should be denied.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT**

I hereby certify that:

1. This document complies with the type-volume limitations of Rule 32(a)(7)(B)(i) of the Federal Rules of Appellate Procedure and this Court's briefing format order dated January 10, 2022 (Doc. #1929752). According to the word processing system used in this office, this document, not including the sections excluded by Rule 32(f) and Circuit Rule 32(e)(1), contains 6457 words.

2. This document complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this document has been prepared in a proportionally spaced typeface in 14-point Times New Roman.

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**CERTIFICATE OF SERVICE**

I hereby certify that, on June 1, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system, which served a copy of the document on all counsel of record in the case.

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STATUTORY AND REGULATORY ADDENDUM

STATUTORY AND REGULATORY ADDENDUM  
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**FEDERAL REGISTER & REGULATIONS**

Executive Order No. 13990, Protecting Public Health and the Environment and  
Restoring Science To Tackle the Climate Crisis,  
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“methanol” includes any fuel which contains at least 85 percent methanol unless the Administrator increases such percentage as he deems appropriate to protect public health and welfare.

(July 14, 1955, ch. 360, title II, § 219, as added Pub. L. 101-549, title II, § 227[(a)], Nov. 15, 1990, 104 Stat. 2505.)

#### PART B—AIRCRAFT EMISSION STANDARDS

##### § 7571. Establishment of standards

###### (a) Study; proposed standards; hearings; issuance of regulations

(1) Within 90 days after December 31, 1970, the Administrator shall commence a study and investigation of emissions of air pollutants from aircraft in order to determine—

(A) the extent to which such emissions affect air quality in air quality control regions throughout the United States, and

(B) the technological feasibility of controlling such emissions.

(2)(A) The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B)(i) The Administrator shall consult with the Administrator of the Federal Aviation Administration on aircraft engine emission standards.

(ii) The Administrator shall not change the aircraft engine emission standards if such change would significantly increase noise and adversely affect safety.

(3) The Administrator shall hold public hearings with respect to such proposed standards. Such hearings shall, to the extent practicable, be held in air quality control regions which are most seriously affected by aircraft emissions. Within 90 days after the issuance of such proposed regulations, he shall issue such regulations with such modifications as he deems appropriate. Such regulations may be revised from time to time.

###### (b) Effective date of regulations

Any regulation prescribed under this section (and any revision thereof) shall take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

###### (c) Regulations which create hazards to aircraft safety

Any regulations in effect under this section on August 7, 1977, or proposed or promulgated thereafter, or amendments thereto, with respect to aircraft shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety. Any such finding shall include a reasonably spe-

cific statement of the basis upon which the finding was made.

(July 14, 1955, ch. 360, title II, § 231, as added Pub. L. 91-604, § 11(a)(1), Dec. 31, 1970, 84 Stat. 1703; amended Pub. L. 95-95, title II, § 225, title IV, § 401(f), Aug. 7, 1977, 91 Stat. 769, 791; Pub. L. 104-264, title IV, § 406(b), Oct. 9, 1996, 110 Stat. 3257.)

#### CODIFICATION

Section was formerly classified to section 1857f-9 of this title.

#### AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104-264 designated existing provisions as subpar. (A) and added subpar. (B).

1977—Subsec. (a)(2). Pub. L. 95-95, § 401(f), substituted “The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare” for “Within 180 days after commencing such study and investigation, the Administrator shall publish a report of such study and investigation and shall issue proposed emission standards applicable to emissions of any air pollutant from any class or classes of aircraft or aircraft engines which in his judgment cause or contribute to or are likely to cause or contribute to air pollution which endangers the public health or welfare”.

Subsec. (c). Pub. L. 95-95, § 225, substituted “Any regulations in effect under this section on August 7, 1977, or proposed or promulgated thereafter, or amendments thereto, with respect to aircraft shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety” for “Any regulations under this section, or amendments thereto, with respect to aircraft, shall be prescribed only after consultation with the Secretary of Transportation in order to assure appropriate consideration for aircraft safety” and inserted provision that findings include a reasonably specific statement of the basis upon which the finding was made.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104-264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of Title 49, Transportation.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

#### MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY AND INVESTIGATION OF UNINSTALLED AIRCRAFT ENGINES

Pub. L. 101-549, title II, §233, Nov. 15, 1990, 104 Stat. 2529, provided that:

“(a) STUDY.—The Administrator of the Environmental Protection Agency and the Secretary of Transportation, in consultation with the Secretary of Defense, shall commence a study and investigation of the testing of uninstalled aircraft engines in enclosed test cells that shall address at a minimum the following issues and such other issues as they shall deem appropriate—

“(1) whether technologies exist to control some or all emissions of oxides of nitrogen from test cells;

“(2) the effectiveness of such technologies;

“(3) the cost of implementing such technologies;

“(4) whether such technologies affect the safety, design, structure, operation, or performance of aircraft engines;

“(5) whether such technologies impair the effectiveness and accuracy of aircraft engine safety design, and performance tests conducted in test cells; and

“(6) the impact of not controlling such oxides of nitrogen in the applicable nonattainment areas and on other sources, stationary and mobile, on oxides of nitrogen in such areas.

“(b) REPORT, AUTHORITY TO REGULATE.—Not later than 24 months after enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the Administrator of the Environmental Protection Agency and the Secretary of Transportation shall submit to Congress a report of the study conducted under this section. Following the completion of such study, any of the States may adopt or enforce any standard for emissions of oxides of nitrogen from test cells only after issuing a public notice stating whether such standards are in accordance with the findings of the study.”

**§ 7572. Enforcement of standards**

**(a) Regulations to insure compliance with standards**

The Secretary of Transportation, after consultation with the Administrator, shall prescribe regulations to insure compliance with all standards prescribed under section 7571 of this title by the Administrator. The regulations of the Secretary of Transportation shall include provisions making such standards applicable in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by part A of subtitle VII of title 49 or the Department of Transportation Act. Such Secretary shall insure that all necessary inspections are accomplished, and,<sup>1</sup> may execute any power or duty vested in him by any other provision of law in the execution of all powers and duties vested in him under this section.

**(b) Notice and appeal rights**

In any action to amend, modify, suspend, or revoke a certificate in which violation of an emission standard prescribed under section 7571 of this title or of a regulation prescribed under subsection (a) is at issue, the certificate holder shall have the same notice and appeal rights as are prescribed for such holders in part A of subtitle VII of title 49 or the Department of Transportation Act, except that in any appeal to the National Transportation Safety Board, the Board may amend, modify, or revoke the order of the Secretary of Transportation only if it finds no violation of such standard or regulation

and that such amendment, modification, or revocation is consistent with safety in air transportation.

(July 14, 1955, ch. 360, title II, §232, as added Pub. L. 91-604, §11(a)(1), Dec. 31, 1970, 84 Stat. 1704.)

REFERENCES IN TEXT

The Department of Transportation Act, referred to in subsecs. (a) and (b), is Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, as amended, which was classified principally to sections 1651 to 1660 of former Title 49, Transportation. The Act was repealed and the provisions thereof reenacted in Title 49, Transportation, by Pub. L. 97-449, Jan. 12, 1983, 96 Stat. 2413, and Pub. L. 103-272, July 5, 1994, 108 Stat. 745. The Act was also repealed by Pub. L. 104-287, §7(5), Oct. 11, 1996, 110 Stat. 3400. For disposition of sections of former Title 49, see Table at the beginning of Title 49.

CODIFICATION

In subsecs. (a) and (b), “part A of subtitle VII of title 49” substituted for “the Federal Aviation Act [49 App. U.S.C. 1301 et seq.]” and “the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Section was formerly classified to section 1857f-10 of this title.

**§ 7573. State standards and controls**

No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.

(July 14, 1955, ch. 360, title II, §233, as added Pub. L. 91-604, §11(a)(1), Dec. 31, 1970, 84 Stat. 1704.)

CODIFICATION

Section was formerly classified to section 1857f-11 of this title.

**§ 7574. Definitions**

Terms used in this part (other than Administrator) shall have the same meaning as such terms have under section 40102(a) of title 49.

(July 14, 1955, ch. 360, title II, §234, as added Pub. L. 91-604, §11(a)(1), Dec. 31, 1970, 84 Stat. 1705.)

CODIFICATION

In text, “section 40102(a) of title 49” substituted for “section 101 of the Federal Aviation Act of 1958” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Section was formerly classified to section 1857f-12 of this title.

PART C—CLEAN FUEL VEHICLES

**§ 7581. Definitions**

For purposes of this part—

**(1) Terms defined in part A**

The definitions applicable to part A under section 7550 of this title shall also apply for purposes of this part.

**(2) Clean alternative fuel**

The term “clean alternative fuel” means any fuel (including methanol, ethanol, or

<sup>1</sup> So in original. The comma probably should not appear.

## Presidential Documents

Executive Order 13990 of January 20, 2021

### Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1. Policy.** Our Nation has an abiding commitment to empower our workers and communities; promote and protect our public health and the environment; and conserve our national treasures and monuments, places that secure our national memory. Where the Federal Government has failed to meet that commitment in the past, it must advance environmental justice. In carrying out this charge, the Federal Government must be guided by the best science and be protected by processes that ensure the integrity of Federal decision-making. It is, therefore, the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.

To that end, this order directs all executive departments and agencies (agencies) to immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with these important national objectives, and to immediately commence work to confront the climate crisis.

**Sec. 2. Immediate Review of Agency Actions Taken Between January 20, 2017, and January 20, 2021.** (a) The heads of all agencies shall immediately review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (agency actions) promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, the policy set forth in section 1 of this order. For any such actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions. In addition, for the agency actions in the 4 categories set forth in subsections (i) through (iv) of this section, the head of the relevant agency, as appropriate and consistent with applicable law, shall consider publishing for notice and comment a proposed rule suspending, revising, or rescinding the agency action within the time frame specified.

(i) Reducing Methane Emissions in the Oil and Gas Sector: “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration,” 85 FR 57398 (September 15, 2020), by September 2021.

(ii) Establishing Ambitious, Job-Creating Fuel Economy Standards: “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program,” 84 FR 51310 (September 27, 2019), by April 2021; and “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks,” 85 FR 24174 (April 30,

2020), by July 2021. In considering whether to propose suspending, revising, or rescinding the latter rule, the agency should consider the views of representatives from labor unions, States, and industry.

(iii) Job-Creating Appliance- and Building-Efficiency Standards: “Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment,” 85 FR 8626 (February 14, 2020), with major revisions proposed by March 2021 and any remaining revisions proposed by June 2021; “Energy Conservation Program for Appliance Standards: Procedures for Evaluating Statutory Factors for Use in New or Revised Energy Conservation Standards,” 85 FR 50937 (August 19, 2020), with major revisions proposed by March 2021 and any remaining revisions proposed by June 2021; “Final Determination Regarding Energy Efficiency Improvements in the 2018 International Energy Conservation Code (IECC),” 84 FR 67435 (December 10, 2019), by May 2021; “Final Determination Regarding Energy Efficiency Improvements in ANSI/ASHRAE/IES Standard 90.1–2016: Energy Standard for Buildings, Except Low-Rise Residential Buildings,” 83 FR 8463 (February 27, 2018), by May 2021.

(iv) Protecting Our Air from Harmful Pollution: “National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review,” 85 FR 31286 (May 22, 2020), by August 2021; “Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process,” 85 FR 84130 (December 23, 2020), as soon as possible; “Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information,” 86 FR 469 (January 6, 2021), as soon as possible.

(b) Within 30 days of the date of this order, heads of agencies shall submit to the Director of the Office of Management and Budget (OMB) a preliminary list of any actions being considered pursuant to section (2)(a) of this order that would be completed by December 31, 2021, and that would be subject to OMB review. Within 90 days of the date of this order, heads of agencies shall submit to the Director of OMB an updated list of any actions being considered pursuant to section (2)(a) of this order that would be completed by December 31, 2025, and that would be subject to OMB review. At the time of submission to the Director of OMB, heads of agencies shall also send each list to the National Climate Advisor. In addition, and at the same time, heads of agencies shall send to the National Climate Advisor a list of additional actions being considered pursuant to section (2)(a) of this order that would not be subject to OMB review.

(c) Heads of agencies shall, as appropriate and consistent with applicable law, consider whether to take any additional agency actions to fully enforce the policy set forth in section 1 of this order. With respect to the Administrator of the Environmental Protection Agency, the following specific actions should be considered:

(i) proposing new regulations to establish comprehensive standards of performance and emission guidelines for methane and volatile organic compound emissions from existing operations in the oil and gas sector, including the exploration and production, transmission, processing, and storage segments, by September 2021; and

(ii) proposing a Federal Implementation Plan in accordance with the Environmental Protection Agency’s “Findings of Failure To Submit State Implementation Plan Revisions in Response to the 2016 Oil and Natural Gas Industry Control Techniques Guidelines for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) and for States in the Ozone Transport Region,” 85 FR 72963 (November 16, 2020), for California, Connecticut, New York, Pennsylvania, and Texas by January 2022.

(d) The Attorney General may, as appropriate and consistent with applicable law, provide notice of this order and any actions taken pursuant to section 2(a) of this order to any court with jurisdiction over pending litigation related to those agency actions identified pursuant to section (2)(a) of this order, and may, in his discretion, request that the court stay or otherwise dispose of litigation, or seek other appropriate relief consistent with this order, until the completion of the processes described in this order.

(e) In carrying out the actions directed in this section, heads of agencies shall seek input from the public and stakeholders, including State local, Tribal, and territorial officials, scientists, labor unions, environmental advocates, and environmental justice organizations.

**Sec. 3. *Restoring National Monuments.*** (a) The Secretary of the Interior, as appropriate and consistent with applicable law, including the Antiquities Act, 54 U.S.C. 320301 *et seq.*, shall, in consultation with the Attorney General, the Secretaries of Agriculture and Commerce, the Chair of the Council on Environmental Quality, and Tribal governments, conduct a review of the monument boundaries and conditions that were established by Proclamation 9681 of December 4, 2017 (Modifying the Bears Ears National Monument); Proclamation 9682 of December 4, 2017 (Modifying the Grand Staircase-Escalante National Monument); and Proclamation 10049 of June 5, 2020 (Modifying the Northeast Canyons and Seamounts Marine National Monument), to determine whether restoration of the monument boundaries and conditions that existed as of January 20, 2017, would be appropriate.

(b) Within 60 days of the date of this order, the Secretary of the Interior shall submit a report to the President summarizing the findings of the review conducted pursuant to subsection (a), which shall include recommendations for such Presidential actions or other actions consistent with law as the Secretary may consider appropriate to carry out the policy set forth in section 1 of this order.

(c) The Attorney General may, as appropriate and consistent with applicable law, provide notice of this order to any court with jurisdiction over pending litigation related to the Grand Staircase-Escalante, Bears Ears, and Northeast Canyons and Seamounts Marine National Monuments, and may, in his discretion, request that the court stay the litigation or otherwise delay further litigation, or seek other appropriate relief consistent with this order, pending the completion of the actions described in subsection (a) of this section.

**Sec. 4. *Arctic Refuge.*** (a) In light of the alleged legal deficiencies underlying the program, including the inadequacy of the environmental review required by the National Environmental Policy Act, the Secretary of the Interior shall, as appropriate and consistent with applicable law, place a temporary moratorium on all activities of the Federal Government relating to the implementation of the Coastal Plain Oil and Gas Leasing Program, as established by the Record of Decision signed August 17, 2020, in the Arctic National Wildlife Refuge. The Secretary shall review the program and, as appropriate and consistent with applicable law, conduct a new, comprehensive analysis of the potential environmental impacts of the oil and gas program.

(b) In Executive Order 13754 of December 9, 2016 (Northern Bering Sea Climate Resilience), and in the Presidential Memorandum of December 20, 2016 (Withdrawal of Certain Portions of the United States Arctic Outer Continental Shelf From Mineral Leasing), President Obama withdrew areas in Arctic waters and the Bering Sea from oil and gas drilling and established the Northern Bering Sea Climate Resilience Area. Subsequently, the order was revoked and the memorandum was amended in Executive Order 13795 of April 28, 2017 (Implementing an America-First Offshore Energy Strategy). Pursuant to section 12(a) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1341(a), Executive Order 13754 and the Presidential Memorandum of December 20, 2016, are hereby reinstated in their original form, thereby restoring the original withdrawal of certain offshore areas in Arctic waters and the Bering Sea from oil and gas drilling.

(c) The Attorney General may, as appropriate and consistent with applicable law, provide notice of this order to any court with jurisdiction over pending litigation related to the Coastal Plain Oil and Gas Leasing Program in the Arctic National Wildlife Refuge and other related programs, and may, in his discretion, request that the court stay the litigation or otherwise delay further litigation, or seek other appropriate relief consistent with this order, pending the completion of the actions described in subsection (a) of this section.

**Sec. 5. *Accounting for the Benefits of Reducing Climate Pollution.*** (a) It is essential that agencies capture the full costs of greenhouse gas emissions as accurately as possible, including by taking global damages into account. Doing so facilitates sound decision-making, recognizes the breadth of climate impacts, and supports the international leadership of the United States on climate issues. The “social cost of carbon” (SCC), “social cost of nitrous oxide” (SCN), and “social cost of methane” (SCM) are estimates of the monetized damages associated with incremental increases in greenhouse gas emissions. They are intended to include changes in net agricultural productivity, human health, property damage from increased flood risk, and the value of ecosystem services. An accurate social cost is essential for agencies to accurately determine the social benefits of reducing greenhouse gas emissions when conducting cost-benefit analyses of regulatory and other actions.

(b) There is hereby established an Interagency Working Group on the Social Cost of Greenhouse Gases (the “Working Group”). The Chair of the Council of Economic Advisers, Director of OMB, and Director of the Office of Science and Technology Policy shall serve as Co-Chairs of the Working Group.

(i) **Membership.** The Working Group shall also include the following other officers, or their designees: the Secretary of the Treasury; the Secretary of the Interior; the Secretary of Agriculture; the Secretary of Commerce; the Secretary of Health and Human Services; the Secretary of Transportation; the Secretary of Energy; the Chair of the Council on Environmental Quality; the Administrator of the Environmental Protection Agency; the Assistant to the President and National Climate Advisor; and the Assistant to the President for Economic Policy and Director of the National Economic Council.

(ii) **Mission and Work.** The Working Group shall, as appropriate and consistent with applicable law:

(A) publish an interim SCC, SCN, and SCM within 30 days of the date of this order, which agencies shall use when monetizing the value of changes in greenhouse gas emissions resulting from regulations and other relevant agency actions until final values are published;

(B) publish a final SCC, SCN, and SCM by no later than January 2022;

(C) provide recommendations to the President, by no later than September 1, 2021, regarding areas of decision-making, budgeting, and procurement by the Federal Government where the SCC, SCN, and SCM should be applied;

(D) provide recommendations, by no later than June 1, 2022, regarding a process for reviewing, and, as appropriate, updating, the SCC, SCN, and SCM to ensure that these costs are based on the best available economics and science; and

(E) provide recommendations, to be published with the final SCC, SCN, and SCM under subparagraph (A) if feasible, and in any event by no later than June 1, 2022, to revise methodologies for calculating the SCC, SCN, and SCM, to the extent that current methodologies do not adequately take account of climate risk, environmental justice, and intergenerational equity.

(iii) Methodology. In carrying out its activities, the Working Group shall consider the recommendations of the National Academies of Science, Engineering, and Medicine as reported in *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide* (2017) and other pertinent scientific literature; solicit public comment; engage with the public and stakeholders; seek the advice of ethics experts; and ensure that the SCC, SCN, and SCM reflect the interests of future generations in avoiding threats posed by climate change.

**Sec. 6. *Revoking the March 2019 Permit for the Keystone XL Pipeline.*** (a) On March 29, 2019, the President granted to TransCanada Keystone Pipeline, L.P. a Presidential permit (the “Permit”) to construct, connect, operate, and maintain pipeline facilities at the international border of the United States and Canada (the “Keystone XL pipeline”), subject to express conditions and potential revocation in the President’s sole discretion. The Permit is hereby revoked in accordance with Article 1(1) of the Permit.

(b) In 2015, following an exhaustive review, the Department of State and the President determined that approving the proposed Keystone XL pipeline would not serve the U.S. national interest. That analysis, in addition to concluding that the significance of the proposed pipeline for our energy security and economy is limited, stressed that the United States must prioritize the development of a clean energy economy, which will in turn create good jobs. The analysis further concluded that approval of the proposed pipeline would undermine U.S. climate leadership by undercutting the credibility and influence of the United States in urging other countries to take ambitious climate action.

(c) Climate change has had a growing effect on the U.S. economy, with climate-related costs increasing over the last 4 years. Extreme weather events and other climate-related effects have harmed the health, safety, and security of the American people and have increased the urgency for combatting climate change and accelerating the transition toward a clean energy economy. The world must be put on a sustainable climate pathway to protect Americans and the domestic economy from harmful climate impacts, and to create well-paying union jobs as part of the climate solution.

(d) The Keystone XL pipeline disserves the U.S. national interest. The United States and the world face a climate crisis. That crisis must be met with action on a scale and at a speed commensurate with the need to avoid setting the world on a dangerous, potentially catastrophic, climate trajectory. At home, we will combat the crisis with an ambitious plan to build back better, designed to both reduce harmful emissions and create good clean-energy jobs. Our domestic efforts must go hand in hand with U.S. diplomatic engagement. Because most greenhouse gas emissions originate beyond our borders, such engagement is more necessary and urgent than ever. The United States must be in a position to exercise vigorous climate leadership in order to achieve a significant increase in global climate action and put the world on a sustainable climate pathway. Leaving the Keystone XL pipeline permit in place would not be consistent with my Administration’s economic and climate imperatives.

**Sec. 7. *Other Revocations.*** (a) Executive Order 13766 of January 24, 2017 (Expediting Environmental Reviews and Approvals For High Priority Infrastructure Projects), Executive Order 13778 of February 28, 2017 (Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule), Executive Order 13783 of March 28, 2017 (Promoting Energy Independence and Economic Growth), Executive Order 13792 of April 26, 2017 (Review of Designations Under the Antiquities Act), Executive Order 13795 of April 28, 2017 (Implementing an America-First Offshore Energy Strategy), Executive Order 13868 of April 10, 2019 (Promoting Energy Infrastructure and Economic Growth), and Executive Order 13927 of June 4, 2020 (Accelerating the Nation’s Economic Recovery from the COVID–19 Emergency by Expediting Infrastructure Investments and Other Activities), are hereby revoked. Executive Order 13834 of May 17, 2018

(Efficient Federal Operations), is hereby revoked except for sections 6, 7, and 11.

(b) Executive Order 13807 of August 15, 2017 (Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects), is hereby revoked. The Director of OMB and the Chair of the Council on Environmental Quality shall jointly consider whether to recommend that a replacement order be issued.

(c) Executive Order 13920 of May 1, 2020 (Securing the United States Bulk-Power System), is hereby suspended for 90 days. The Secretary of Energy and the Director of OMB shall jointly consider whether to recommend that a replacement order be issued.

(d) The Presidential Memorandum of April 12, 2018 (Promoting Domestic Manufacturing and Job Creation Policies and Procedures Relating to Implementation of Air Quality Standards), the Presidential Memorandum of October 19, 2018 (Promoting the Reliable Supply and Delivery of Water in the West), and the Presidential Memorandum of February 19, 2020 (Developing and Delivering More Water Supplies in California), are hereby revoked.

(e) The Council on Environmental Quality shall rescind its draft guidance entitled, "Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions," 84 FR 30097 (June 26, 2019). The Council, as appropriate and consistent with applicable law, shall review, revise, and update its final guidance entitled, "Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews," 81 FR 51866 (August 5, 2016).

(f) The Director of OMB and the heads of agencies shall promptly take steps to rescind any orders, rules, regulations, guidelines, or policies, or portions thereof, including, if necessary, by proposing such rescissions through notice-and-comment rulemaking, implementing or enforcing the Executive Orders, Presidential Memoranda, and draft guidance identified in this section, as appropriate and consistent with applicable law.

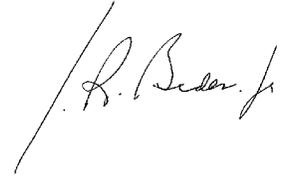
**Sec. 8. General Provisions.** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,  
*January 20, 2021.*

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