

EPA PROPOSES RULE TO FORCE AIRLINES TO ADOPT GREENHOUSE GAS EMISSIONS STANDARDS THEY SET FOR THEMSELVES

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The Trump Administration recently released the long-awaited proposal for controlling greenhouse gas emissions for aircraft. This proposed airline rule forestalls an impending lawsuit by bringing the federal government into compliance with a legal requirement under the Clean Air Act that they regulate greenhouse gas emissions from airplanes.

In 2016, the EPA determined that greenhouse gases from aircraft present a danger to public health and the welfare of future generations. The Clean Air Act endangerment finding allowed the EPA to issue regulations regarding airplane emissions. The EPA says this proposal formalizes improvements into the airplanes' certification process that up until now have been considered voluntary.

The standards proposed by the EPA conform to, and do not differ from, the regulations set by the United Nations aviation regulatory body known as the International Civil Aviation Organization ("ICAO"). The EPA plans to use procedures established by this organization to determine compliance with the proposed EPA rule. Thus EPA's proposed rule will not reduce emissions at all beyond their current levels because domestic airplane makers have already been working to make their airplanes conform to the ICAO standards for controlling carbon dioxide and nitrous oxide emissions. The EPA rule would simply give the EPA agency oversight authority.

Advocacy groups believe these standards do not go far enough. The EPA is handing regulation over to the industry itself, and doing nothing to reduce pollution beyond regulations already covered by industry standards. The proposal is modeled after a plan drafted by international airline companies that required a 4% reduction in fuel consumption of new aircraft. Environmentalists say the new EPA rule and the existing UN standard do nothing to lower emissions because the airline industry met that standard years ago.

The release of the rule is likely an effort to stave off litigation. In January 2020, several environmental groups filed notice of intent to sue the Trump administration for failure to meet the requirement of regulating greenhouse gases from aircraft. Though this rule arguably fails to significantly change the overall emissions of greenhouse gases, the environmental groups no longer have legal grounds to sue over a failure to regulate the aviation industry.