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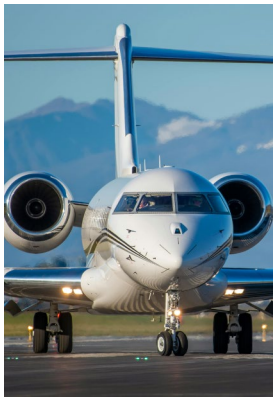

Policy Brief: Aircraft on a Different Runway for Endangerment Finding Repeal

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In a policy move upending federal climate change policy, the Environmental Protection Agency (EPA) published a rule on February 18, 2026, rescinding the 2009 endangerment finding and accompanying cause-or-contribute finding for greenhouse gases (GHGs) under Clean Air Act Section 202(a) for new motor vehicles and engines ("2009 endangerment finding for motor vehicles"). See VNF's prior alert on the rescission. However, motor vehicles and aircraft are governed by two distinct legal frameworks, and rescinding regulations in one might not automatically rescind those in the other.

EPA's 2016 aircraft endangerment finding and cause-or-contribute finding under Clean Air Act Section 231(a) for certain classes of aircraft engines ("2016 endangerment finding for aircraft") is on the Trump Administration's chopping block, but it has not yet been revoked. As with the motor vehicle endangerment finding, the aircraft endangerment finding is a predicate for EPA's establishment of aircraft GHG standards, which EPA finalized in 2021.

EPA's rescission of the 2016 endangerment finding would fundamentally alter regulation of U.S. GHG emissions from aircraft. EPA's deregulatory initiative is creating legal uncertainty and complexity both in the U.S. and international aviation spaces.

BACKGROUND

In August 2016, EPA finalized two determinations under Section 231(a) of the Clean Air Act—an endangerment finding and a cause-or-contribute finding—concluding that elevated atmospheric concentrations of six well-mixed GHGs endanger public health and welfare, and that GHG emissions from certain classes of aircraft engines used in covered aircraft cause or contribute to that endangering air pollution. 81 FR 54422 (Aug. 15, 2016). These Section 231(a) findings were procedurally distinct from EPA's 2009 Section 202(a) action for new motor vehicles and engines, which found that the same GHGs endanger public health and welfare and that emissions of those GHGs from new motor vehicles and engines contribute to that endangering air pollution. However, EPA's 2016 aircraft findings explicitly leaned on the 2009 endangerment record and framework, applied to the same six GHGs, and relied on the same scientific and technical evidence while considering post-2009 assessments.

The Section 231(a) findings applied to certain classes of aircraft engines used in subsonic jet aircraft with a maximum takeoff mass greater than 5,700 kilograms and larger turboprop aircraft with a maximum takeoff mass greater than 8,618 kilograms. The findings served as the necessary predicate to adopting GHG emission standards for those aircraft engines. EPA subsequently finalized GHG emission standards for certain airplanes and airplane engines that were consistent

with the International Civil Aviation Organization (ICAO) airplane CO_2 standard. 86 FR 2136 (Jan. 11, 2021). The EPA standards align in scope, stringency, and timing with ICAO's 2017 Annex 16, Volume III CO_2 standard, as was advocated for by industry. The D.C. Circuit later upheld EPA's 2021 GHG standards in California v. EPA, 72 F.4th 308 (D.C. Cir. 2023), holding that EPA acted within its Section 231 authority in adopting standards aligned with ICAO's aircraft CO_2 framework. Because FAA is responsible for implementing EPA's aircraft emissions standards through certification and related compliance regulations under Clean Air Act Section 232, FAA issued a separate implementing rule in 2024. 89 FR 12634 (Feb. 16, 2024).

DIFFERENCE BETWEEN MOTOR VEHICLE AND AIRCRAFT ENDANGERMENT FINDINGS

The 2009 endangerment finding for motor vehicles was issued under Section 202(a) of the Clean Air Act, which specifically addresses emissions from "new motor vehicles" and "new motor vehicle engines." That finding was prompted by the Supreme Court's 2007 decision in *Massachusetts v. EPA*, where the Court held that GHGs fit the definition of "air pollutant" under the Clean Air Act, that EPA is required to regulate GHGs from new motor vehicles under Section 202(a) if the agency makes an endangerment finding, and that EPA cannot refuse to evaluate endangerment based on unrelated policy factors. 549 U.S. 497 (2007).

Aircraft emissions are governed by a different provision—Section 231(a) of the Clean Air Act—which independently directs EPA to study and regulate air pollutants from aircraft engines. Under subsections (a)(2) and (a)(3), if EPA finds that aircraft engine emissions "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare," it "shall" propose and issue standards to control those emissions. Because Section 231 is distinct from Section 202, the motor vehicle finding could not legally serve as a substitute—EPA, in exercising its Section 231(a)(2)(A) judgment, made separate Section 231(a)(2) findings—an endangerment finding as to elevated atmospheric concentrations of the six well-mixed GHGs (building on the 2009 endangerment record, as updated) and a source-specific "cause or contribute" finding for covered aircraft engines—which it did in the 2016 endangerment finding for aircraft.

The endangerment finding for aircraft was an independent rulemaking procedure with its own public notice, comment period, and analysis of the specific contribution of aircraft emissions to GHG pollution. Environmental organizations petitioned EPA as early as 2007 under Section 231 to make the aircraft-specific finding, but EPA did not respond for years—leading to legal challenges over the delay. EPA ultimately finalized the aircraft endangerment finding on August 15, 2016.

The distinction between the motor vehicle endangerment finding and the aircraft endangerment finding has practical consequences. When EPA rescinded the 2009 endangerment finding for motor vehicles on February 18, 2026, the rescission applied only to the Section 202(a) finding and did not directly affect the 2016 endangerment finding for aircraft under Section 231(a). However, EPA has indicated

it intends to separately reconsider the 2016 aircraft GHG endangerment finding as well, according to the most recent Unified Agenda of Regulatory and Deregulatory Actions.

ENDANGERMENT FINDING FOR MOTOR VEHICLES AND ENGINES' IMPACT ON AIRCRAFT ENDANGERMENT FINDING

As a formal legal matter, the 2016 endangerment finding for aircraft under Section 231(a) remains in place as a separate regulatory action notwithstanding the February 18, 2026 final rule rescinding the 2009 endangerment finding for motor vehicles and engines under Section 202(a). However, the rationales EPA used to rescind the motor vehicle finding could significantly undercut the legal foundation for the aircraft endangerment finding in three ways:

1. **Shared statutory language.** EPA's reinterpretation of the statutory terms "air pollution" and "cause," and "contribute" under Section 202(a) could also apply to the uses of those terms in both Sections 111 (standards of performance for new stationary sources) and 231(a). Section 231(a) uses nearly identical "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare" language.

2. **Local vs. global pollution.** EPA concluded in the rescission that the Clean Air Act's concept of "air pollution" in Section 202(a) is limited to pollution that endangers health or welfare "through local or regional exposure," and that global systems like climate change fall outside EPA's authority under that section. If that interpretation is upheld, it could also apply to the aircraft endangerment finding, which also rests on the contribution of GHG emissions to global climate change.

3. **Major Questions Doctrine.** EPA invoked the Major Questions Doctrine to support rescission of the motor vehicle finding, arguing that regulation of motor vehicle GHGs under the Section 202(a) Clean Air Act amounts to a matter of vast economic and political significance requiring clear congressional authorization—which authorization is lacking. It also argued that the form of regulation was novel in so far as it was designed to force a shift to electric vehicles. At least the first argument could apply to GHG regulation of aircraft under Section 231(a).

INTERNATIONAL PERSPECTIVE

Given the inherent international character of aviation, aircraft emissions policy has an international dimension. ICAO, a specialized agency of the United Nations, develops international standards and recommended practices for civil aviation, and ICAO's Committee on Aviation Environmental Protection (CAEP) performs the principal technical work on aircraft emissions. EPA and the Federal Aviation Administration (FAA) participate in that work. EPA drew on that international work in framing both its 2016 Section 231(a) endangerment and cause-or-contribute findings and its 2021 airplane GHG standards. These are equivalent in scope, stringency, and timing to ICAO's 2017 airplane CO_2 standards.

ICAO thus supplied the technical metric, coverage thresholds, and internationally negotiated benchmark that EPA incorporated into its 2021 rule. However, ICAO did not itself supply EPA's domestic legal authority, as EPA's obligation to promulgate standards arose only after its own Section 231(a) findings. Although EPA emphasized that harmonization with ICAO was important to international uniformity, certification recognition, and competitiveness of U.S. manufacturers, Section 231(a) does not by its terms require EPA to adopt ICAO-equivalent standards or forbid more stringent domestic standards.

EPA has recognized that Section 231(a) confers a broad degree of discretion in setting aircraft engine standards, subject to consultation with FAA and consideration of safety, lead time, and compliance costs. A country's divergence from ICAO standards has concrete consequences under the Chicago Convention: a country that does not implement an ICAO Standard and Recommended Practice (SARP) must notify ICAO of the "difference", and other countries may not recognize certificates of aircraft that do not meet ICAO standards—thereby restricting operation in their airspaces. *See* Articles 33, 38. In practice, countries seek harmonization with ICAO standards. It is not clear whether or how other countries would address divergence from ICAO standards by the United States. EPA's 2021 decision to align with ICAO therefore reflected judgment that harmonization was the most reasonable course in light of international uniformity, certification recognition, competitiveness, and the agency's regulatory practice in the aircraft context.

CONCLUSION

Although the aircraft endangerment finding remains in effect, EPA's stated deregulatory position and announced reconsideration place those findings at substantial risk. EPA's 2016 Section 231(a) findings relied substantially on the same scientific basis concerning the six well-mixed GHGs and on analytical foundations developed in connection with the 2009 Section 202(a) action, while adding aircraft-specific determinations and considerations unique to Section 231. EPA's current statutory interpretation—particularly its narrowed reading of "air pollution" and its reliance on the Major Questions Doctrine—may affect the continued validity of the Section 231(a) findings.

If EPA follows through on its stated intent, a separate rulemaking to rescind the aircraft finding would need to go through its own notice-and-comment process. EPA's Spring 2025 Unified Agenda identifies a deregulatory rulemaking to reconsider both the 2016 aircraft finding and the 2021 aircraft GHG standards, even though a proposal has not been released as of the date of this policy brief. While the 2016 Section 231(a) endangerment and cause-or-contribute findings remain legally operative for now, they are plainly vulnerable and should be assessed against the backdrop of the legal and policy complications facing the aviation industry.

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FOR MORE INFORMATION

Van Ness Feldman closely monitors and counsels clients on energy transition and air quality law and policy, including the Clean Air Act. For further details or assistance with assessing the impacts of this policy arena, please contact Britt Speyer Fleming, Kyle Danish, or A.J. Singletary.