



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 87 and 1068**

**[EPA-HQ-OAR-2014-0828; FRL-9957-73-OAR]**

**Reconsideration of Finding that Greenhouse Gas Emissions from Aircraft Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger Public Health and Welfare**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final action denying petition for reconsideration.

**SUMMARY:** This action provides notice that the U.S. Environmental Protection Agency (EPA) Administrator, Gina McCarthy, denied a petition for reconsideration of the final Finding that Greenhouse Gas Emissions from Aircraft Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger Public Health and Welfare, published in the **Federal Register** on August 15, 2016.

**DATES:** The EPA took final action to deny the petition for reconsideration on December 21, 2016.

**FOR FURTHER INFORMATION CONTACT:** Lesley Jantarasami, Office of Atmospheric Programs, Climate Change Division, Environmental Protection Agency, 1200 Pennsylvania Ave.

NW, Mail Code 6207-A, Washington DC 20460; Telephone number: (202) 343-9990; E-mail address: ghgendangerment@epa.gov.

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### *A. How can I get copies of this document and other related information?*

This **Federal Register** document, the petition for reconsideration and the EPA's response addressing the petition for reconsideration are available in the docket under Docket ID No. EPA-HQ-OAR-2014-0828.

*Docket.* The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2014-0828. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Docket Center (EPA/DC), EPA WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742. This action, the petition for reconsideration and the EPA's response addressing the petition can also be found on the EPA's Web site at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-finding-greenhouse-gas-emissions-aircraft>.

*Electronic access.* You may access this **Federal Register** document electronically from the Government Printing Office under the "**Federal Register**" listings at FDSys (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>).

## II. Judicial Review

Section 307(b)(1) of the Clean Air Act (CAA) indicates which Federal Court of Appeals have venue over petitions for review of final EPA actions. This section provides, in part, that the petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if: (i) The agency action consists of "nationally applicable regulations promulgated, or final action taken, by the Administrator;" or (ii) such actions are locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

The EPA has determined that its action denying the petition for reconsideration is nationally applicable for purposes of CAA section 307(b)(1) because it affects the final Finding that Greenhouse Gas Emissions from Aircraft Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger Public Health and Welfare, and that finding triggers the EPA's statutory duty to promulgate aircraft engine emission standards under CAA section 231, which are nationally applicable regulations and for which judicial review will be available only in the U.S. Court of Appeals for the District of Columbia Circuit. Moreover, EPA already determined that the subject finding was nationally applicable, *see* 81 FR 54422 (Aug. 15, 2016), and that finding has in fact been challenged in the U.S. Court of Appeals for the District of Columbia Circuit. In the alternative, even if this action were considered to be only locally or regionally applicable, the Administrator has determined that it has nationwide scope and effect within the meaning of CAA section 307(b)(1) both because EPA has determined that the final finding has nationwide scope and effect within the meaning of CAA section 307(b)(1), *see* 81 FR 54422 (Aug. 15, 2016), and because it concerns risks from GHG pollution and contributions to such pollution that occur across the nation.

Thus, any petition for judicial review of the EPA's decision to deny the petition for reconsideration described in this document must be filed in the U.S. Court of Appeals for the District of Columbia Circuit by [INSERT DATE 60 DAYS FOLLOWING PUBLICATION IN THE FEDERAL REGISTER].

### **III. Description of Action**

On July 25, 2016, EPA Administrator McCarthy signed the action entitled “Finding that Greenhouse Gas Emissions from Aircraft Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger Public Health and Welfare.” That action included two findings under section 231(a)(2)(A) of the CAA. These findings were that: (1) concentrations of six well-mixed greenhouse gases (GHGs) in the atmosphere endanger the public health and welfare of current and future generations (the endangerment finding), and (2) GHGs emitted from certain classes of engines used in certain aircraft<sup>1</sup> are contributing to the air pollution—the mix of those six GHGs in the atmosphere—that endangers public health and welfare (the cause or contribute finding, or contribution finding). The Administrator made these findings using the same definitions of “air pollution” and “air pollutant” as were used in earlier findings under CAA section 202(a)(1) regarding motor vehicle GHG emissions (the 2009 Findings), namely the combined mix of six key well-mixed GHGs: carbon dioxide (CO<sub>2</sub>), methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>). While the 2009 Findings under CAA section 202(a)(1) relate to GHG emissions from new motor vehicles and new motor vehicle engines, these findings under CAA section 231(a)(2)(A) relate to GHG

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<sup>1</sup> The contribution finding concludes that GHG emissions from certain classes of engines used in “U.S. covered aircraft” contribute to the air pollution that endangers public health and welfare. The finding defines “U.S. covered aircraft” to be subsonic jet aircraft with a maximum takeoff mass (MTOM) greater than 5,700 kilograms and subsonic propeller driven aircraft (e.g., turboprops) with a MTOM greater than 8,618 kilograms. This contribution finding for engines used in U.S. covered aircraft results in the vast majority (89 percent) of total U.S. aircraft GHG emissions being included in this determination.

emissions from certain classes of engines used in certain aircraft. These findings were published in the *Federal Register* on August 15, 2016 (81 FR 54422), and became effective on September 14, 2016 (2016 Findings).

The Biogenic CO<sub>2</sub> Coalition (Petitioner) submitted a petition dated October 14, 2016 asking the EPA to reconsider the 2016 Findings with respect to the Agency's treatment of biogenic carbon dioxide (CO<sub>2</sub>) emissions from short-cycle annual herbaceous crops. CAA section 307(d)(7)(B) states that “[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed.”

The EPA carefully reviewed the petition for reconsideration and evaluated all the information presented on the issues raised, along with information contained in the docket for the 2016 Findings, in reaching a decision on the petition. The EPA has concluded that the petition does not meet the criteria for reconsideration in CAA section 307(d)(7)(B). In a letter to the petitioner, the EPA Administrator, Gina McCarthy, denied the petition for reconsideration. The letter included an enclosure, a Reconsideration Response document entitled “Response to the Biogenic CO<sub>2</sub> Coalition’s Petition for Reconsideration of the Final Finding that Greenhouse Gas Emissions from Aircraft Cause or Contribute to Air Pollution that May Reasonably Be

Anticipated to Endanger Public Health and Welfare,” that articulates in detail the rationale for the EPA’s final responses to the petition for reconsideration and the EPA Administrator’s denial of that petition. These documents are all available in the docket for this action.

#### **IV. Conclusion**

For the reasons discussed in the letter to the petitioner and the Reconsideration Response document, the petition to reconsider the final Finding that Greenhouse Gas Emissions from Aircraft Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger Public Health and Welfare is denied.

Dated: December 21, 2016.

Gina McCarthy,  
Administrator.

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