

**79th Annual Meeting of the
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**Legal Complexities of Addressing
Climate Change at Airports**

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Can Airports Address Climate Change?

→ Airports are logical leaders

- Cities already leading on climate and environmental issues
 - Local entities feel climate effects first
- Most visible gateways to cities
- Significant part of cities' direct emissions
- Risks to projects from inaction



What are the Constraints?

- Increasing pressure to act
- Regulations on the horizon but no clear path forward yet
- Airports don't have direct control over all activities
- Airports have limited authority under existing regulatory framework



International Efforts

➔ International Civil Aviation Organization (ICAO)

- 1944 Convention on International Civil Aviation
- Signatories agreed to harmonize regulation of aviation
- Current efforts on GHG:
 - Carbon calculator for aviation emissions
 - Guidance on voluntary trading

➔ EU Emission Trading Scheme (ETS)

- Proposal for aviation-related GHG emissions to be included in ETS cap and trade system starting 2011
- Airlines to be responsible
 - Including non-EU carriers



Supreme Court: *Mass. v. EPA*

- Challenge to EPA's denial of rulemaking petition for cars and trucks
- Court found EPA's denial was improper
- Determined GHGs are air pollutants under Clean Air Act
- EPA failed to justify denial of petition to regulate



Center for Biological Diversity v. NHTSA

- November 2007 decision from 9th Circuit
- Found NHTSA EA for fuel economy rules inadequate
- EA quantified CO₂ effects
 - NHTSA rule reduced GHG emissions (0.2%)
- Court found that NHTSA failed to show why these effects were insignificant
- Focus on cumulative impacts



U.S. Initiatives

➔ Legislation, *e.g.*, Lieberman Climate Security Act

- Cap and trade system
- Investments toward related policies, including:
 - Technology
 - Mitigation
- Aviation Aspect: Jet fuel included in cap and trade

➔ Federal Agencies

- Rulemaking Petitions re: mobile sources (aviation, on-road, non-road, and marine)
- ANPRM on climate change



2007 Rulemaking Petitions Under Clean Air Act Section 231

- ➔ Section 231 very similar to Section 202, which formed the basis for *Mass. v. EPA*
- ➔ Based on *Mass v. EPA* and similar factual findings
- ➔ Petitions not limited to engine technology:
 - Single-engine taxi
 - Ground power
 - Continuous descent arrival
 - Engine/aircraft cleaning
 - Taxi time
 - Airspace operations
- ➔ Is Section 231 the right platform for addressing aviation GHG emissions?



Where Is Regulation Going?

Some Educated Guesses

➔ Aircraft emissions through emissions trading

- Thrust of most proposed legislation
 - *E.g.*, Lieberman Climate Security Act
- Clean Air Act not currently a good platform for regulation of GHGs
- Airspace operations desperately need improvement

➔ Regulation of airport-related emissions less clear

- Airports are most likely to be responsible for direct emissions
- Powers of state and other governments to regulate non-aircraft GHGs not fully tested
- Relatively small piece of the puzzle
- Project-level reviews – NEPA and little NEPAs



Local/Regional Initiatives

→ California

- Global Warming Solutions Act 2006
 - Reduce state-wide emissions of GHGs to 1990 levels by 2020
- CARB Scoping Plan
- CEQA

→ Regional Greenhouse Gas Initiative

- Cap and trade program for emissions from power plants in nine north-east states

→ Participation in Chicago Climate Exchange

- Participation voluntary
- But once a party, contractual obligations to reduce CO₂ emissions

→ Applicability to aviation industry is still unclear



Some Complicating Factors for Airport Sponsors

- ➔ **Lack of Federal Leadership**
- ➔ **Direct Control Limited**
- ➔ **Legal Constraints**
 - Federal Preemption
 - Federal Aviation Act
 - Clean Air Act
 - Anti-Head Tax
 - Financing Constraints
 - Compliance with Grant Assurances



Examples of Competing Interests:

| GHG Initiative | FAR Constraint |
|---|---|
| Request aircraft reduce GHG emissions | Airports preempted from regulating operation of aircraft in flight |
| Limit airport users to aircraft with low GHG emissions | Grant Assurances require airports be available for public use without unjust discrimination |
| Impose fees to account for GHG emissions | Mandatory charge on passengers is barred by the Anti-Head Tax |
| Buy carbon offsets | Federal restrictions on the use of airport revenue |
| On airport controls: <i>e.g.</i> , limit idling time, engine run-ups; requiring towing in lieu of using engines for taxiing | Likely less controversial, but would only address a small fraction of total GHG emissions |





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