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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

 Legislative initiatives, 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:

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