



Aviation and Climate Change: Legal and Regulatory Update

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Danger CO₂W



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Overview

- International:
 - EU ETS
 - ICAO
 - Kyoto Protocol
- Supreme Court: *Massachusetts v. EPA*
- NEPA: *Center for Biological Diversity v. NHTSA*
- Petitions for Regulation of Aviation under Clean Air Act Section 231
- Legislation (e.g., Lieberman Climate Security Act)



Supreme Court: *Massachusetts v. EPA*

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



Coming Soon To an EIS Near You?

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



NHTSA Decision

- “[T]he fact that climate change is largely a global phenomenon that includes actions that are outside of [the agency’s] control ... does not release the agency from the duty of assessing the effects of its actions on global warming within the context of other actions that also affect global warming.”



NHTSA (continued)

“The impact of greenhouse gases on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct.”



NHTSA and NEPA

- Uncertain application of *NHTSA* for other cases
- Failure to address climate issue may create significant risk
- Need for industry and FAA to develop approach
- Little NEPAs also seeing GHG issues
 - California suits
 - Washington (King County)



State and Environmental Clean Air Act Petitions

- Filed in December 2007 under CAA Section 231
- Section 231 very similar to Section 201, which formed the basis for *Mass. v. EPA*
- Based on *Mass v. EPA* and similar factual findings



State and Environmental Clean Air Act Petitions

- Petitions not limited to engine technology:
 - Single-engine taxi
 - Ground power
 - Continuous descent arrival
 - Engine/aircraft cleaning
 - Taxi time
 - Airspace operations
- Expect more drama in 2008



Where Is Regulation Going?

Educated Guesses

- Aircraft emissions through emissions trading
 - Thrust of most proposed legislation
 - *E.g.*, Lieberman Climate Security Act
 - Current bill would place incidence of responsibility on fuel providers
 - ATA, ALPA and others vigorously opposing
 - Airspace operations desperately need improvement
- Regulation of airport-related emissions less clear
 - Airports are most likely to be responsible for direct emissions
 - Relatively small piece of the puzzle
 - Project-level reviews – NEPA and little NEPAs



Questions?

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