

## **Proposed Greenhouse Gas Emissions Rule Would Affect Airports**

On March 10, 2009, the United States Environmental Protection Agency (“EPA”) issued a [proposed rule](#) that would be the first federal regulation that would apply climate change requirements to airports. The proposed rule would require large emitters of greenhouse gases to report their emissions. The proposed rule is likely to directly affect a number of airports in the United States if finalized in its current form.

EPA has requested comments on the proposed rule, which are due 60 days after the publication of the proposed rule in the Federal Register, expected as soon as this week. Airports should follow this rulemaking closely and consider providing comments to the EPA regarding the proposed rule, which will increase the regulatory reporting requirements for many in the airport industry.

EPA’s proposed rule would be the first mandatory, comprehensive, and national system of greenhouse gas emissions reporting in the United States. The agency claims that its proposed rule will cover over 13,000 entities and 85 to 90 percent of the emissions of greenhouse gases in the United States.

### Reporting Emissions from Large Stationary Sources Like Boilers

A number of airports that operate large combustion-based heating, cooling or cogeneration facilities are likely to be subject to these reporting requirements. EPA’s proposed rule would require any facilities with stationary fuel combustion sources that emit more than 25,000 metric tons per year of carbon dioxide or its greenhouse gas equivalents to report these emissions to EPA annually. Such stationary sources include boilers, stationary engines, heaters and combustion turbines that may be found on airports, especially in heating/cooling plants. A quick review of available airport clean air permits indicates that many airports’ emissions are likely to exceed the 25,000 tons per year threshold.

The proposed rule would rely on Clear Air Act permitting principles to determine what sources need to be included in the emissions assessment. Among other things, the proposal would require inclusion of all sources on a property that are under common ownership or common control. Thus, all airport-owned and controlled stationary sources on an airport would need to be assessed together (emissions sources in a multi-airport system would not generally need to be assessed together). If tenant stationary sources have separate air quality permits, they would likely be treated as separate facilities under the proposed rule. This is an area where the rule could be clarified.

EPA is proposing to allow owners of facilities to presume that their operations would not emit more than 25,000 metric tons of greenhouse gases *if all of the stationary fuel combustion equipment on the facility – such as an airport – would not together exceed 30 million British thermal units (“mmBTU”) per hour*. Airports and other facilities with boilers and other equipment that exceed 30 mmBTU/hour will need to calculate their annual greenhouse gas emissions to determine if they are subject to the reporting rule,

even if they do not ultimately exceed the 25,000-ton threshold for reporting. However, because many of the boilers and other pieces of equipment in airport heating plants can exceed the 30 mmBTU/hour, a number of airports will need to develop these emissions estimates. The proposed rule contains some details regarding proposed methods of calculating emissions, which vary based on the size of the combustion equipment and whether air quality permits already require continuous emissions monitors.

EPA would require facilities to file their first emissions reports in early 2011, based on data collected in 2010.

#### EPA Request for Comments on Other Issues Potentially Affecting Airports

The proposed rule would not require airports or other entities to report emissions that are associated with their use of electricity that other entities generate, including private or public utilities. However, EPA is seeking comment regarding whether it should require large users of electricity to report on their usage. This could lead to reporting requirements for airports and other electricity users in the future, even if the generators of the electricity are already required to report their emissions.

Similarly, EPA has not proposed to require airports to report any emissions from aircraft, ground service equipment, motor vehicles or other mobile sources. However, it has asked for comment on whether to require state and local governments and vehicle fleet operators (including airlines) to report on vehicle miles traveled, emissions and other factors in order for the agency to better understand transportation emissions. It is likely that some environmental and other stakeholders will push hard for the inclusion of fleet emissions reporting. Thus, it would be prudent for airports and other government entities to comment on this issue to ensure that EPA has their perspective on the issue.

EPA is also proposing to require the manufacturers of aircraft engines, non-road equipment (like ground support equipment), trucks, cars and other mobile sources to report the emissions characteristics of their products. This reporting would occur during the emissions certification processes to which these manufacturers are already subject under the Clean Air Act.

#### The Proposed Rule Is Just the Beginning

The proposed EPA greenhouse gas reporting rule is just one of a number of climate change-related regulatory developments anticipated this year. The new EPA Administrator, Lisa Jackson, has reported that EPA is likely to issue a proposed finding soon responding to the Supreme Court's direction on April 2, 2007, that the agency determine whether greenhouse gas emissions from motor vehicles endanger public health and the environment. If EPA concludes that such emissions do cause endangerment, it may trigger Clean Air Act regulation of greenhouse emissions from cars, trucks, aircraft, power plants and other sources. Indeed, EPA will need to respond specifically to petitions filed by California, other states and a number of environmental groups arguing that the Clean Air Act requires regulation of aviation-related emissions.

In addition, President Obama has called for a national cap-and-trade greenhouse gas emissions reduction program as part of his 2010 budget proposal. It is expected that one or more cap-and-trade bills will be introduced in Congress this year. It remains to be seen whether and how aviation would be included in such a national program. If it is included, it may be addressed through requirements on jet fuel producers (as was proposed in leading legislation last year) or the airlines (who will be subject to cap-and-trade requirements in the European Union).

Further, it is likely that the Council on Environmental Quality will issue guidance regarding the treatment of climate change in National Environmental Policy Act reviews. The Federal Aviation Administration (“FAA”) and other agencies have already begun to include discussion of climate change in environmental review documents under NEPA.

Regardless of how it may be ultimately structured, any regulation of greenhouse gas emissions from aviation will affect the entire industry, airports included. Because they will be affected, directly or indirectly, airports should ensure that their voices are heard in the rulemaking and legislative processes.