

CLIENT ALERT

Obama Administration Takes First Step Toward Regulating Carbon Pollution from the Aviation Sector

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On June 10, the Environmental Protection Agency (EPA) took preliminary steps to regulate greenhouse gas (GHG) emissions from the aviation sector under section 231 of the Clean Air Act (CAA). First, EPA proposed to determine that (i) GHG concentrations in the atmosphere endanger the public health and welfare of current and future generations, and (ii) GHG emissions from certain classes of aircraft engines contribute to that endangerment. If finalized, these would be EPA's second formal "endangerment finding" following EPA's 2009 endangerment finding under CAA section 202(a) for new motor vehicles.

If finalized, EPA considers the endangerment finding (EF) to next trigger a duty under CAA § 231 to promulgate GHG emission standards applicable to classes of aircraft engines that were found to contribute to the dangerous GHG concentrations. The unique administrative wrinkle in the process thereafter would be that the Federal Aviation Administration (FAA), not EPA, must then prescribe regulations to insure compliance with the standards pursuant to section 232 of the CAA.

EPA concurrently issued an Advanced Notice of Proposed Rulemaking (ANPR) providing an overview of regulatory options to adopt and implement domestic aircraft engine GHG emission standards based on corresponding international standards being developed by the International Civil Aviation Organization (ICAO). The U.S. is a participating member state of ICAO under the 1944 Convention on International Civil Aviation (also known as the Chicago Convention), and is actively involved in ICAO's Committee on Aviation Environmental Protection (CAEP). CAEP is charged with establishing "an international CO₂ emission standard which the EPA could then consider proposing for adoption." ICAO/CAEP is set to conclude its process in February 2016 establishing the international standard and additional compliance measures to reduce the aviation sector's climate impact. Such compliance measures would allow regulated entities to harness emissions reductions through the use of alternative fuels, improved design and operational efficiencies, and market-based measures (e.g. international emissions offset trading).

EPA seeks public comment on a variety of issues related to the developing international GHG standard including (1) whether such standards should apply to in-production aircrafts in addition to new aircrafts, (2) the appropriate implementation date for the potential standard, and (3) the appropriate stringency level for any adopted standard.

EPA intends to follow its traditional approach of working with ICAO/CAEP on the international standard, and then promulgating domestic CAA standards "of at least equal stringency as" any ICAO standard. EPA is seeking input, however, on several aspects of the future domestic standard, including the possibility that EPA adopts a standard more stringent than the international standard and how EPA should proceed if the ICAO/CAEP process standard-setting process fails.

But importantly, the ANPR does not propose any particular means of compliance with a domestic or international standard. Notably absent is any mention of the CAEP compliance measures being developed alongside the international standard, including ICAO's current work to establish a market-based compliance alternative: ICAO is considering an aviation sector-specific carbon offsets regime to allow regulated entities to purchase GHG reductions from third parties as an alternative to installing more efficient engines or incurring additional new design costs.

Otherwise, EPA is requesting comment on all aspects of the proposed EF and ANPR. Comments will be due 60 days after publication in the Federal Register. EPA will hold a public hearing on the EF and ANPR on August 11, 2015.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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