

---

## U.S. EPA Finds Greenhouse Gas Emissions from Aircraft Endanger Public Health—a First Step in Adoption of New ICAO Standards

By Jennifer Trock, Kenneth P. Quinn and Matthew Morrison

---

*The International Civil Aviation Organization (ICAO) released a draft rule in February of this year proposing a new standard for reducing GHG emissions in new and in-production commercial aircraft. In the wake of the proposed ICAO standard, which must be approved and formally adopted by the ICAO Council, the U.S. Environmental Protection Agency (EPA) has issued a finding that aircraft greenhouse gas (GHG) emissions endanger public health and welfare—a prerequisite for new U.S. regulations setting standards for GHG emissions, which will be after ICAO's standard is finalized in March 2017.*

---

### ICAO Standard for Aircraft GHG Emissions

The new draft ICAO standard, if adopted, will apply to aircraft manufacturers or engine manufacturers for all new passenger and cargo aircraft designs beginning in 2020, and 2023 for all designs already in production at that time. All new commercial and business aircraft delivered after Jan. 1, 2028, would have to comply with the new standard. The standard will require, on average, a 4% reduction in fuel consumption of new aircraft compared to 2016 levels. The new standard will apply to new aircraft designs and also to those aircraft currently in production, covering all sizes and types of aircraft in international aviation—smaller business and regional jets as well as large commercial and cargo aircraft. The standard would not apply to existing aircraft already in service. In addition, between 2023 and 2028, any modified in-production aircraft with significant changes would also have to be certified to the new standard.

ICAO's Committee on Aviation and Environmental Protection (CAEP) will take up the issue of aircraft GHG emissions during its 39<sup>th</sup> Triennial Assembly in September-October 2016. ICAO members have reached agreement on the new emissions standard to integrate fuel-efficient technologies into the design and development of aircraft. However, given that the aviation market will continue to grow at a rapid rate in the coming years, governments and the private sector are in agreement that an aircraft emissions standard is not the only solution. During the Assembly, ICAO members will also be considering other alternative

solutions to reduce the aviation industry's carbon footprint. Among the potential solutions ICAO members will consider are a global market-based measure scheme (GMBM) to offset GHG emissions from international flights and alternative sustainable fuels (e.g. biofuels). The GMBM scheme includes a basket of measures available to address aircraft GHG emissions, including technologies, operational improvements, levies, and other offsets. Given the technical complexity of the various options for curbing aircraft GHG emissions, controversy is expected before ICAO members reach an agreement on any recommendations regarding the GMBM or alternative fuels.

ICAO's proposed emissions standard must still be adopted by the ICAO Council. ICAO Contracting States, which include 191 countries, must then adopt the standards under their own domestic legislation to make them legally binding and enforceable.

### U.S. Process for Implementing Aircraft GHG Emissions Standards

In addition to adopting the emissions standards, Contracting States' civil aviation authorities must also adopt the standard as the basis for domestic regulations on the manufacture and certification of aircraft to ensure compliance with the standards. In the U.S., the EPA and the U.S. Federal Aviation Administration (FAA) traditionally work within the ICAO standard-setting process to establish international emission standards. Historically, once the ICAO adopts GHG emissions standards, the EPA then initiates a rulemaking under the Clean Air Act to establish domestic standards followed by the FAA issuing regulations to ensure industry compliance with these standards.

In July 2015, the EPA issued a Notice of Proposed Rulemaking (NPRM), finding that greenhouse gas emissions from aircraft endanger human health and an Advance Notice of Proposed Rulemaking (ANPRM) indicating and seeking comment on the Agency's intent to adopt emissions standards of at least equivalent stringency to the ICAO GHG standard. The EPA issued its final rule on the endangerment finding on July 25, 2016. Following the endangerment finding, the EPA must still issue an NPRM before issuing the final rule adopting the ICAO GHG standard, which will likely be after ICAO formally adopts the standard in March 2017. Once the EPA issues its NPRM on the ICAO GHG standard, any member of the public—including interested stakeholders—can submit comments regarding the proposed EPA rule.

After the EPA issues the new standard, the FAA will undertake a notice-and-comment rulemaking to implement the EPA's emissions standards in the certification and manufacture of aircraft context. Industry stakeholders will have another opportunity to comment on any proposed FAA regulations.

### Implications for the Industry

The aviation industry at large has generally welcomed the new ICAO standard, with Airlines for America (A4A) and the Air Line Pilots Association (ALPA) stating that "U.S. standards for aircraft engine GHG emissions should and must be consistent with and not go beyond those issued by ICAO." Environmental groups, however, contend that the new ICAO requirements are less strict than what current aircraft are already able to achieve and challenge the standard's limited applicability to new planes while excluding existing lesser fuel-efficient aircraft currently in service. U.S. environmental groups have even sued the EPA to force quicker action on setting the emissions standards.

The new ICAO standard, once adopted, will impact all future design, manufacture and sale of aircraft worldwide. Airlines, Original Equipment Manufacturers (OEMs), and corporate aircraft purchasers should familiarize themselves with the proposed ICAO standard and its requirements, the timeline for its finalization, and begin considering the standard when making all future aircraft and engine design and

purchase decisions. They should also consider submitting comments supporting the EPA's proposed rule or the forthcoming FAA regulations that will implement the new standard.

For questions on the standard and how it could impact your business, and for assistance in submitting comments, please contact [Jennifer Trock](#) or [Kenneth Quinn](#), of Pillsbury's Aviation, Aerospace & Transportation practice or [Matthew Morrison](#) of the Environmental practice.

---

If you have any questions about the content of this Alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

Jennifer E. Trock [\(bio\)](#)  
Washington, DC  
+1.202.663.9179  
[jennifer.trock@pillsburylaw.com](mailto:jennifer.trock@pillsburylaw.com)

Kenneth P. Quinn [\(bio\)](#)  
Washington, DC  
+1.202.663.8898  
[kenneth.quinn@pillsburylaw.com](mailto:kenneth.quinn@pillsburylaw.com)

Matthew Morrison [\(bio\)](#)  
Washington, DC  
+1.202.663.8036  
[matthew.morrison@pillsburylaw.com](mailto:matthew.morrison@pillsburylaw.com)

**Pillsbury Winthrop Shaw Pittman LLP** is a leading international law firm with offices around the world and a particular focus on the energy & natural resources, financial services, real estate & construction, and technology sectors. Recognized by *Financial Times* as one of the most innovative law firms, Pillsbury and its lawyers are highly regarded for their forward-thinking approach, their enthusiasm for collaborating across disciplines and their unsurpassed commercial awareness.

This publication is issued periodically to keep Pillsbury Winthrop Shaw Pittman LLP clients and other interested parties informed of current legal developments that may affect or otherwise be of interest to them. The comments contained herein do not constitute legal opinion and should not be regarded as a substitute for legal advice.

© 2016 Pillsbury Winthrop Shaw Pittman LLP. All Rights Reserved.