



# LEGAL EASE

## Aviation Law Made Simple

BY JASON DICKSTEIN  
AEA GENERAL COUNSEL

## House Bill on Energy and Emissions Could Impact General Aviation

**T**he U.S. House of Representatives has promulgated sweeping new legislation that would radically change the landscape for energy and emissions in the United States. While the news media focuses on the costs of energy and the consumer, relatively little public media attention is paid to the effect on aircraft and their emissions.

The House bill H.R. 2454, the American Clean Energy and Security

standards applicable to emissions of greenhouse gases from new aircraft and new engines used in aircraft by Dec. 31, 2012. Notwithstanding any requirement in Section 231(a), the Administrator, in consultation with the Administrator of the Federal Aviation Administration, shall also promulgate standards applicable to emissions of greenhouse gases from other classes and categories of aircraft and aircraft engines for such classes and categories

available at the time such standards take effect, taking into consideration cost, energy and safety factors associated with the application of such technology. Any such standards shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology.

Is it all Greek to you? It is for most people. The new House language would mean the EPA would be required to promulgate new emissions standards for aircraft engines. These new standards would apply to new aircraft and to new engines as of Dec. 31, 2012. The legislation also requires the EPA to promulgate new emissions standards for all aircraft engines (including existing engines) without any particular time limit on when those standards would apply.

The word “notwithstanding” in this legislation is important. Under the current law, the EPA already has the power to set emissions standards for aircraft engines, but the existing law requires the EPA to make a finding that the class of engines affected “causes, or contributes to, air pollution, which may reasonably be anticipated to endanger public health or welfare.” This means, under current

The new House language would mean the EPA would be required to promulgate new emissions standards for aircraft engines.

Act of 2009, was passed in the House on June 26. The next step is for the Senate to take up the legislation. If the House language becomes law, the bill likely will impact the general aviation community. This could affect the AEA membership if it decreases the number of general aviation aircraft that are permitted to fly.

The House legislation includes new standards for aircraft engines:

(c) Aircraft and Aircraft Engines—

(1) Pursuant to Section 231(a), the Administrator shall promulgate

standards as the Administrator determines appropriate and in the timeframe the Administrator determines appropriate. The Administrator may revise these standards from time to time.

(2) Standards under Section 231(a) applicable to emissions of greenhouse gases from new aircraft and new engines used in aircraft, and any later revisions or additional standards, shall achieve the greatest degree of emissions reduction achievable based on the application of technology which the Administrator determines will be

law, the EPA may not impose emissions standards on engines that do not have an appreciable effect on public health or welfare.

The limits of the existing law also forbid the EPA from changing “the aircraft engine emission standards if such change would significantly increase noise and adversely affect safety.” By imposing the new power to regulate engines “notwithstanding any requirement in Section 231(a),” the new legislation would permit the EPA to impose new emissions standards even if those standards would require engines to increase in their noise or if the changes would adversely affect safety.

The noise-gaseous emissions trade-off, in particular, is worrisome. While noise is certainly a concern of airports and the people who live around them (as well as OSHA, which has standards for noise exposure), it is not known as a concern for the EPA.

How likely is the EPA to push the standards as to be uncomfortable to the aviation community? Very likely. The new aircraft standards are required to “achieve the greatest degree of emissions reduction achievable based on the application of technology which the Administrator determines will be available at the time such standards take effect, taking into consideration cost, energy and safety factors associated with the application of such technology.” This gives the EPA the mandate to push the emissions standards to the limits.

Politically, many people have viewed the aviation community as a rich potential source for emissions reduction, despite the fact the avia-

tion community already has achieved significant emissions reductions on its own. Unfortunately, those prior emissions reductions in the industry could only make it more difficult to achieve significant emissions in the future,

Under the new legislation, the EPA is permitted to establish provisions for averaging, banking and trading of greenhouse gas emissions credits within or across classes or categories of aircraft and aircraft engines to the

---

Under the new cap-and-trade system, the emissions standards could be set so they fundamentally are unattainable under reasonable design standards.

---

as most of the “low-hanging fruit” among emissions-reductions strategies already has been picked.

While the current legislation forbids the emission standards from adversely affecting noise and safety, the new standard only would need to take those factors into consideration. After taking them into consideration, the EPA would be permitted to make the decision the trade-off was acceptable.

In fact, if the EPA were to impose a new standard that affirmatively jeopardized air safety, the way to fight it would be to apply to the secretary of transportation for a finding that the EPA standard jeopardized safety, then apply to the White House for a presidential order overturning the standards. The FAA would have no independent power to avoid these standards for safety reasons.

Some people might think there is no way the American public will stand for emissions standards that would result in grounding the commercial airlines. While this likely is true, there is another clause that potentially could save the commercial airlines at the expense of the general aviation community.

extent the Administrator determines appropriate, and considering the factors appropriate in setting standards under those sections. Such provisions could include reasonable and appropriate provisions concerning generation, banking, trading, duration and use of credits.

Under the new cap-and-trade system, the emissions standards could be set so they fundamentally are unattainable under reasonable design standards. By permitting the purchase of credits, air carriers would be permitted to use their resources to offset their otherwise non-compliant emissions. Many in the general aviation community, however, might not reasonably be able to afford such credits and, in such a case, effectively be grounded.

The legislation still is subject to passage in the Senate, but because the legislation is strongly supported by the White House, it is likely the clauses affecting aviation will become law. □

---

*If you have comments or questions about this article, send e-mails to [avionicsnews@aea.net](mailto:avionicsnews@aea.net).*