

California regulators had an opportunity this year to be a global leader on requiring airplanes to use low-carbon jet fuel. But the Air Resources Board [announced](#) earlier this month that it will back off from its earlier proposal to require jet fuel providers to decarbonize, through the agency's landmark low carbon fuel standard program.

Why the change? The agency's [official explanation](#) was a head scratcher, noting that jet fuel suppliers could avoid having to actually provide low-carbon fuel to airplanes by buying credits from an entity with surplus credits to sell. But that is the whole point of this market-based program: regulated entities can either reduce the carbon in their products or pay someone else to do it. Either way, the mandate is in effect and the higher cost of carbon becomes a disincentive to pay to burn it.

So what's really going on? The potential subtext of the agency's decision (besides the political pressure from the aviation industry against any such mandate) is fear over lawsuits. Specifically, the airline industry has [asserted](#) that California is wholly preempted by various federal laws from mandating any sort of decarbonization of jet fuel.

But the industry overstates the risk of preemption, as a forthcoming CLEE legal analysis will document. There are three federal statutes at issue when it comes to aviation and federal preemption, which our report will detail. Despite their existence, California still has runway (ahem) to regulate jet fuel.

First, the Clean Air Act governs regulation of airplane engines and associated emissions. But in this case, California would not require airlines to change their engines or meet specific emissions standards. Instead, the low carbon fuel standard solely regulates the fuels as inputs. And when low-carbon biofuels blend with fossil jet fuel (the most common type of sustainable aviation fuel), no engine modifications are necessarily required.

Second, the Airline Deregulation Act prevents states and local governments from interfering with the national aviation market, if they take action "related to" prices, routes and services. A mandate for blending lower-carbon fuels into fossil jet is on its face not "related" to these specific economic features of a national aviation market. But if the fuels requirement became stringent enough to significantly affect the prices consumers pay or where airlines schedule refueling or routes, there is likely an outer limit to what California can require on fuels without risking preemption. As a result, the board would need to craft the regulation carefully to avoid these significant impacts.

Finally, the Federal Aviation Act could preempt state laws on jet fuel if the agency set forth national requirements for low-carbon jet fuel, but to date it has not yet finalized any such

rule. And in that absence, California has leeway to regulate.

(And if you're wondering about a separate potential challenge based on the "dormant" commerce clause of the U.S. constitution, where state action creates an unjustified and significant barrier to free trade among states, such a [challenge](#) to the low carbon fuel standard program was already rejected by the Ninth Circuit in 2019, with the US Supreme Court declining to review.)

Why does the Air Resources Board's recent change in policy matter? Aviation is arguably the hardest-to-decarbonize sector in our economy, and policy could help jumpstart solutions. No single technology otherwise currently exists to cover all of our aviation needs in the long term, despite progress on batteries, hydrogen, and potentially "e-fuels," which combine captured carbon with zero-emission hydrogen to create a synthetic, carbon-neutral fuel that can combust in current engines just like fossil fuel.

So in the short run, the Air Resources Board had an opportunity to require airlines to blend in more low-carbon biofuels with fossil jet fuel, lowering the carbon content while sending a clear policy signal to the industry that research and investment must begin now on these longer-term solutions. This is what Governor Newsom required when he [directed](#) the Board in 2022 to "adopt an aggressive 20% clean fuels target for the aviation sector."

With its low carbon fuel standard, California is well positioned not just to offer more carrots to the airline industry to achieve these targets, but an actual stick to ensure compliance. At the same time, a legal pathway to achieve this goal and avoid preemption remains open, as our forthcoming report will discuss in more detail. Instead, by reversing course with this decision, the state now risks a delayed departure when it comes to more sustainable air travel.