



Air Transport Association

November 27, 2007

BY ELECTRONIC SUBMITTAL

Alan Lloyd, Chair

Bob Epstein, Vice-Chair

The Economic and Technology Advancement Advisory Committee
to the California Air Resources Board

Steve Church

Research Division

California Air Resources Board

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Re: *Comments on Economic and Technology Advancements for California Climate Solutions - Discussion DRAFT summaries of proposals to The Economic and Technology Advancement Advisory Committee to The California Air Resources Board (released November 15, 2007)*

Dear Dr. Lloyd, Dr. Epstein and the Members of the ETAAC:

The Air Transport Association of America, Inc. (“ATA”)¹ is pleased to have this opportunity to comment on the discussion draft report of the Economic and Technology Advancement Advisory Committee to the California Air Resources Board (the “ETAAC” or “Committee”) released November 15, 2007, entitled *Economic and Technology Advancements for California Climate Solutions - Discussion DRAFT summaries of proposals to the Committee* (the “Discussion Draft”).

ATA is the principal trade and service organization of the U.S. scheduled airline industry, and ATA’s airline members transport more than 90 percent of all U.S. airline passenger and cargo traffic. In this capacity, ATA regularly comments on federal and state regulatory

¹ The members of the Association are: ABX Air, Inc., Alaska Airlines, Inc., Aloha Airlines, American Airlines, Inc., ASTAR Air Cargo, Inc., Atlas Air, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Evergreen International Airlines, Inc., FedEx Corporation, Hawaiian Airlines, JetBlue Airways Corp., Midwest Airlines, Inc., Northwest Airlines, Inc., Southwest Airlines Co., United Airlines, Inc., UPS Airlines, US Airways, Inc.; associate members are: Air Canada, Air Jamaica Ltd., Mexicana.

developments that may affect the airline industry. Given the short period provided to review this lengthy draft, these comments are intended to highlight a few key issues identified thus far. We look forward to providing further input as necessary in the future.

ATA is pleased to support a number of general principles presented in the Discussion Draft. At the same time, we ask that the Committee take careful note of our comments opposing consideration of “carbon-based landing fees.”

Introduction

As the leading voice of the major scheduled air carriers in the United States, ATA is actively engaged on all aspects of the environmental impacts of aviation on the environment. We take our role in controlling greenhouse gas (“GHG”) emissions very seriously. We believe it is particularly important for policymakers to be aware of our strong record in this regard and the need to calibrate measures carefully to ensure they reinforce, rather than impede our continuing efforts to improve.

Most importantly, commercial airlines have an unparalleled record of improving fuel efficiency – thus reducing GHG emissions – while continually driving economic growth. At the national level, commercial aviation accounts for just 2% of GHG emissions but drives about 6% of gross domestic product. At the international level, commercial aviation accounts for 3% of GHG emissions and drives about 8% of world GDP. The bottom line is that aviation is an extremely GHG-efficient economic engine.

Commercial aviation has been able to deliver such large economic benefits even while reducing emissions by continually reinvesting in technology and fuel efficient operations. As a result, commercial airlines (passenger and cargo combined) have improved fuel efficiency 103% since 1978. Our progress has been even more dramatic in recent years. Today, even though we burn 5% less fuel than we did in 2000, we transport 12% more passengers and 22% more cargo. Few – if any – industries can match this record. And we are committed to building on that record, as ATA members already have committed to improving fuel efficiency another 30% from 2005-2025.²

From a policy perspective, three points cannot be overemphasized. First, the commercial aviation industry is not in need of a “price signal” to stimulate emissions reductions. Fuel is now our number one cost center – averaging 25% of total costs and up to 40% for some carriers. We are not embarrassed that many of our environmental achievements have come as an economic imperative to save fuel. The commercial aviation industry’s symbiotic determination to reduce fuel consumption and emissions will persist. No further incentive is necessary.

Second, future efficiency gains in the commercial aviation industry will depend on our ability to continue investing in new equipment and technology. Constantly upgrading aircraft

² Our industry also is committed to developing commercially viable, environmentally friendly alternative fuels. We have joined the Department of Defense, the Federal Aviation Administration, airframe and engine manufacturers and other stakeholders in the Commercial Aviation Alternative Fuels Initiative (CAAFI), which is dedicated to this end.

and engines and acquiring new fuel-saving winglets and equipage to enable more efficient routing are just a few examples of the many, capital intensive programs our carriers have undertaken to improve. In short, our own investment in technology and more fuel-efficient operations has been the predominant and indispensable ingredient in our success. Programs and policies that compromise our ability to invest in new equipment and technology by diverting capital from aviation to other sectors (many of which have done comparatively little to improve their GHG profile) are counterproductive.

Third, government has a large role to play in ensuring future reductions in aviation emissions through support of avionics research and development and infrastructure planning and development. In addition to having regulatory authority over the airlines and airspace (as discussed in greater detail below), the federal government controls key elements of the infrastructure in which aviation emissions are generated. Most significant in this regard is the federally-controlled air traffic management (“ATM”) system, which, based on 1950s radar technology, is overwhelmingly outdated and inefficient. The routing and traffic efficiencies that can be gained from updating this system to a satellite-based Next Generation ATM system will provide additional emissions reductions of 10-15%. In addition, to a significant extent the federal government controls the aeronautics technology pipeline. Unfortunately, it has narrowed that pipeline significantly, as Congress has reduced NASA and FAA funding for aviation R&D by 50% in the last 8-10 years. ATA and other aviation stakeholders have requested that Congress restore this funding if there is to be any hope of maintaining the country’s preeminent position in aeronautics and developing new aircraft and equipment that will secure dramatically reduced aviation emissions for future generations. California can certainly support progress by supporting aeronautics research.

Comments

Against this backdrop ATA presents the following comments.

ATA supports the underlying tenets of the general principles presented in the Discussion Draft, specifically including the recognition that policies designed to reduce GHG emissions should maximize public health and other “co-benefits,” boost economic growth, and strongly support technology research and development without “picking winners.” In particular, ATA believes it is essential to recognize the limits of policies designed to send a “carbon price signal,” especially as applied to industries like commercial aviation, where market forces already ensure actors will maximize efforts to save fuel and reduce emissions. In other words, the ETAAC should explicitly recognize that in some industries – like aviation – “carbon price signals” are not necessary because the market already is sending the signal loud and clear. Adding another layer on top of that risks significant market distortion and diversion of funds that aviation needs to continue investing in more fuel- and GHG-efficient technology.

There are a number of specific statements and recommendations presented in the Discussion Draft, however, that ATA strongly opposes. Two assertions in the Discussion Draft need to be removed or at least further qualified. First, the Discussion Draft indicates that “airport expansion plans” “tend[] to *increase* GHG emissions.” (Discussion Draft, Table 2 at p. 3-3 (emphasis original)). This statement is not accurate. In many instances expansion of airport infrastructure will not increase air traffic demand but will reduce delays and congestion, thus reducing future emissions. Second, the assertion that “significant GHG emissions reductions

could take place by replacing intrastate air travel with high-speed, electric rail travel” (Discussion Draft at p. 3-21) is not supported by any analysis, including consideration of emissions related to land use, construction and maintenance, and power supply for such a rail system. The statements therefore should be withdrawn.

Much more importantly, however, ATA strongly opposes the suggestion that State and local agencies may consider imposing “carbon-based landing fees.” (Discussion Draft, Table 4 at p. 3-4 and pp. 3-31 to 3-32).³ Recognizing that the regulation of aircraft and their emissions is a matter that can only be addressed in a uniform manner on a national basis, Congress has expressly precluded state and local agencies from imposing any such emission-related landing fee under both the Clean Air Act and Federal Aviation Laws. Consistent with that Congressional policy, Section 233 of the Clean Air Act explicitly preempts any States and their political subdivisions from “adopt[ing] or attempt[ing] to enforce any standard respecting emissions of any air pollution from any aircraft or engine thereof unless such standard is identical to a standard” established by EPA. 42 U.S.C. § 7573. Moreover, under well established Supreme Court precedent, this prohibition extends to State and local actions that attempt to circumvent Congressional intent, either directly or indirectly, by imposing regulatory restrictions, including fees. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 521 (1992) (“The obligation to pay compensation can be, indeed, is designed to be, a potent method of governing conduct and controlling policy”) (citation omitted).

Federal aviation law also (independently) preempts State or local agency emission-based landing fees. Courts have long held the Federal Aviation Act of 1958 creates a “uniform and exclusive system of federal regulation” of aircraft that preempts State and local regulation. *Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 639 (1973) (aviation regulation is an area where “[f]ederal control is intensive and exclusive”) (quoting *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 3030 (1944)); *see also, American Airlines v. Department of Transp.*, 202 F.3d 788, 801 (5th Cir. 2000). In addition, the Airline Deregulation Act precludes States and their political subdivisions from “enact[ing] or enforce[ing] a law, regulation, or other provision having the force and effect of law related to a price, route or service.” 49 U.S.C. § 41713(b)(1). The Supreme Court has held this language “express[es] a broad preemptive purpose,” and even indirect regulation of airlines by generally applicable state laws is preempted if those laws have “a significant effect” on rates, routes or services. *Morales v. Transworld Airlines*, 504 U.S. 374 (1992). By definition, any “landing fee” designed to result in lower GHG emissions must have a “significant effect” on rates, routes and services. Indeed, the economic purpose behind and intended effect of such measures – to “internalize” the environmental costs of emissions in the rate charged, thus affecting the cost of routes and services provided relative to alternatives – establishes unequivocally that they fall beyond the scope of State and local authority. *See also Cipollone v. Liggett Group, Inc.*, 505 U.S. at 521.

³ Contrary to the assertion in the Discussion Draft, ATA is aware of no U.S. jurisdiction that is imposing “revenue neutral incentives, such as airport landing fees that vary with NO_x emissions of different planes.” (Discussion Draft, pp. 3-31 to 3-32).

Accordingly, ATA respectfully requests that the Committee remove from the final report any suggestion that State and local agencies may consider imposing “carbon-based landing fees.”

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Pohle". The signature is fluid and cursive, with a large initial "T" and "P".

Tim Pohle
Managing Director, U.S. Environmental Affairs &
Assistant General Counsel