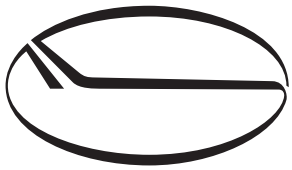

December 5, 2007

BY ELECTRONIC SUBMITTAL

Mary D. Nichols
Chair, California Air Resources Board
c/o Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Proposed California 1990 Statewide Greenhouse Gas Emissions Level and 2020 Emissions Limit

Dear Madame Chairwoman and Members of the Board:

The Air Transport Association of America, Inc. (ATA)[1] is pleased to have this opportunity to comment on the proposed California 1990 Greenhouse Gas Emissions Level and 2020 Emissions Limit (the proposed GHG Limit). ATA is the principal trade and service organization of the U.S. airline industry, and ATA's airline members and their affiliates 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 developments that may affect the airline industry. We appreciate the opportunity that the Air Resources Board (ARB) has provided to submit these comments. Specifically, we write to address the inclusion of intrastate aviation emissions in the proposed GHG Limit.

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.

[1] The members of ATA 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.

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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 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

[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.

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 reduced aviation emissions for future generations. California can certainly support progress by supporting aeronautics research.

In the context of the implementation AB 32, ATA also believes it is important to emphasize that airlines operate in a uniquely competitive environment. Our members in particular operate networks that span the entire nation and extend into international markets where competition among airlines is intense and direct. Policymakers must consider the potential for measures focused on discrete portions of the industry to affect competition negatively.

Comments

Against this backdrop, ATA presents the following comments.

First, ARB's development of the California 1990 Greenhouse Gas Emissions Level and 2020 Emissions Limit (the proposed GHG Limit) is not merely a data collection exercise. AB 32 requires ARB to determine California's 1990 GHG emissions level and to approve a GHG limit to be achieved by 2020 "that is equivalent to that [1990] level." Cal. Health & Safety Code (H&SC) § 38550.[3] As ARB has noted, AB 32 essentially requires ARB to determine a single number: the state's total statewide 1990 GHG emissions level that shall serve as the 2020 emissions limit; the proposed figure is 427 MMT CO2e. ATA takes no position with respect to ARB's development of an emissions inventory *per se*; these comments are addressed to the GHG Limit, a number with statutory and regulatory significance.

As explained in the ARB Staff Report on the California 1990 Greenhouse Gas Emissions Level and 2020 Emissions Limit (November 16, 2007) (the Staff Report), the "1990 California inventory is consistent with international and national guidelines and protocols to the greatest extent possible." Staff Report at 9. The proposed GHG Limit excludes international and interstate aviation, which the Staff Report explains as follows:

> International guidance also recommends excluding bunker fuel emissions for all international aviation flights . . . (IPCC/UNEP/WMO 2006). In an effort to be consistent,

[3] Section 38550 provides: "By January 1, 2008, the state board shall, after one or more public workshops, with public notice, and an opportunity for all interested parties to comment, determine what the statewide greenhouse gas emissions level was in 1990, and approve in a public hearing, a statewide greenhouse gas emissions limit that is equivalent to that level, to be achieved by 2020. In order to ensure the most accurate determination feasible, the state board shall evaluate the best available scientific, technological, and economic information on greenhouse gas emissions to determine the 1990 level of greenhouse gas emissions."

> we propose to exclude these emissions from the 1990 emissions level . . . [W]e are also proposing to exclude greenhouse gas emissions from interstate flights, which is consistent with the international approach of including only those flights within a jurisdiction's borders.

Staff Report at 10. ATA supports this approach, as it is consistent not only with the international guidance[4] but also U.S. guidelines, protocols and law.

The proposed GHG Limit includes intrastate aviation, however. This is *not* consistent with U.S. guidelines, protocols and law. At its August 13, 2007 Workshop on the GHG Limit, ARB stated that it was considering excluding domestic aviation altogether because the "State has no direct control over aviation-related fuel and emission control technologies." ARB Presentation at August 13, 2007 Workshop on the Draft Inventory. Thus, in August ARB acknowledged that the state lacks authority to regulate aviation-related fuel and emission control technologies. The approach outlined at that time -- excluding domestic aviation emissions (including intrastate emissions) from the GHG Limit calculation along with international aviation emissions -- would have been consistent with U.S. law.

After receiving public comments following the August Workshop, ARB decided to include intrastate emissions in the proposed GHG Limit. The Staff Report explains that intrastate aviation was included to be consistent with "the international approach of including only those flights within a jurisdiction's borders." However, under our federal system, the state is *not* the appropriate jurisdiction for this analysis: the U.S. is. In order to be consistent with U.S. guidelines, protocols and law in addition to international guidelines and protocols, intrastate aviation should be excluded from the GHG Limit just as interstate aviation is.

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 regulating in these areas 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 the U.S. Environmental Protection Agency. 42 U.S.C. § 7573. Moreover, courts have consistently and unequivocally held, under well established Supreme Court precedent, that this prohibition extends to State and local actions that attempt to circumvent Congressional intent, either directly or indirectly, by imposing regulatory restrictions on aviation, including measures designed to limit emissions. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 521 (1992).

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[4] International protocols call for emissions from international aviation (referred to as emissions from international "bunker fuels," including jet fuel) to be separated out into an "international" emissions category maintained and reported at the federal level by the relevant country. *See* Intergovernmental Panel on Climate Change, *2006 Guidelines for National Greenhouse Gas Inventories.*

Federal aviation law also (independently) preempts state or local agencies from regulating aviation-related fuel, aircraft emissions, and aircraft emission control technologies. 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); *see also American Airlines v. Department of Transp.*, 202 F.3d 788, 801 (5th Cir. 2000) (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)). In addition, the Airline Deregulation Act precludes states 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).

While it may be appropriate for data collection purposes for California to include in its inventory emissions from international, interstate and intrastate aviation, it would violate federal law for it to regulate these emissions, which is what the AB 32-mandated GHG Limit would do. The GHG Limit will serve as the foundation and touchstone for an entire regulatory regime. All will be impacted, including aviation, as statewide emission reductions will be required from multiple sectors in a zero-sum format in order to meet the limit. To the extent that intrastate aircraft emissions should be regulated -- even indirectly -- it must be done by the federal government and not the fifty different states. This is fundamental to our federal system.[5]

[5] Moreover, commercial aviation is a global industry: a significant part of U.S. commercial airline operations are international and U.S. airlines compete vigorously with foreign airlines in both the passenger and cargo sectors. Accordingly, the federal government has coordinated development of policies affecting the aviation industry on the international level through the International Civil Aviation Organization (ICAO), which is charged with setting noise and emissions standards for aircraft. Recognizing that coordination between countries is needed to facilitate international aviation, ICAO has been charged with establishing standards and recommended practices for international aviation pursuant to the Convention on International Civil Aviation, commonly referred to as the "Chicago Convention." 189 countries, including the U.S., are parties to the Chicago Convention.

ATA therefore respectfully submits that ARB should exclude domestic intrastate aviation as well as domestic interstate and international aviation from the GHG Limit.

Sincerely,

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