



Airlines for America®

We Connect the World

April 20, 2015

Submitted electronically via <http://www.arb.ca.gov/lispub/comm/bclist.php>

Clerk of the Board
Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Comments on “Sustainable Freight: Pathways to Zero and Near-Zero Emissions, Discussion Draft” (Discussion Draft)

To Whom It May Concern:

Airlines for America® (A4A) appreciates this opportunity to comment on the document entitled “Sustainable Freight: Pathways to Zero and Near-Zero Emissions, Discussion Draft” (Discussion Draft), which will be presented as an informational item to the Board on April 23, 2015. A4A is the principal trade and service organization of the U.S. airline industry, and its member airlines and their affiliates transport more than 90 percent of all U.S. airline passengers and cargo traffic.¹

The U.S. airline industry takes its environmental responsibilities very seriously and has an unparalleled record of increasing its contributions to the economy even as it continues to improve its already strong environmental performance. For example, data from the U.S. Bureau of Transportation Statistics confirms that U.S. airlines burned 8 percent less fuel in 2013 than they did in 2000, resulting in an 8 percent reduction in carbon dioxide (CO₂) emissions, even though they carried almost 17 percent more passengers and cargo on a revenue-ton-mile basis. Similarly, we have a strong record of working with government agencies, including the California Air Resources Board (CARB), as they work towards meeting environmental goals and imperatives.

A4A and its member airlines recognize the goals and objectives underlying the Discussion Draft and look forward to working with CARB staff as it works to refine and finalize the document.² However, we have significant concerns regarding the Discussion Draft. To our knowledge there has been very little direct consultation with airlines to date regarding the content of the Discussion Draft, particularly with respect to potential regulatory strategies, policies and/or measures under consideration. We appreciate that the current draft reflects an understanding of the importance of freight movement to the local, California and national economies. However, the document does not appear to reflect an understanding that, measured by value, about one-third of the nation’s freight exports and about one-quarter of its freight imports is

¹ A4A’s members are: Alaska Airlines, Inc.; American Airlines Group (American Airlines and US Airways); Atlas Air, Inc.; Delta Air Lines, Inc.; Federal Express Corporation.; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Continental Holdings, Inc.; and United Parcel Service Co. Air Canada is an associate member.

² It is our understanding that the Board will not take formal action on the Discussion Draft at the April 23rd hearing and will take no formal action to adopt or approve the document before it is finalized. As such, it is our understanding that the document, even when finalized, will not and is not intended to establish any regulatory policy or measure. A4A expressly reserves any and all rights to comment on any policy or measure identified in the document before it is formally adopted.

transported by air.³ Los Angeles International Airport alone accounted for \$87.6 billion in freight shipments in 2013, representing the ninth largest international trade gateway in the nation.⁴ Similarly, the document does not appear to reflect an understanding that air freight is transported by both cargo airlines and passenger airlines.

Perhaps most critically, however, the Discussion Draft does not reflect an understanding of legal constraints the State faces in regulating air transportation and supporting infrastructure and activities. Specifically, the U.S. Congress has long recognized that commercial aviation safety and the efficiency of the National Airspace System depends on the application of a consistent set of regulatory requirements by a primary federal agency – the Federal Aviation Administration (FAA) – with the necessary expertise and capability to develop and administer those requirements. As such, courts have long held that the Federal Aviation Administration Authorization Act and its implementing regulations create a “uniform and exclusive system of federal regulation” of aviation safety that preempts state and local regulation. *Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 639 (1973) (emphasis added).⁵ In addition, the Airline Deregulation Act expressly prohibits states from enacting or enforcing any law “related to a price, route, or service of an air carrier.” 49 U.S.C. § 41713(b)(1). The U.S. Supreme Court has interpreted the term “related to” broadly to preempt all state laws that have “a connection with or reference to” airline prices, routes, or services; a state law need not expressly address the airline industry or be specifically designed to affect it – as long as the law has a connection with airline prices, routes or services, preemption of the law is mandated under the ADA. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992).⁶ Unfortunately, the Discussion Draft identifies a number of potential measures and strategies that likely would be preempted under federal law.⁷ At the same time, the Discussion Draft also includes proposals that, if structured properly, would be of great interest to our industry, including, for example, “establish[ing] an aviation biofuels market.”

A4A already has been in touch with CARB staff in an effort to coordinate a meeting or set of meetings to discuss the document directly and we are heartened by their receptiveness. To help underline the importance of this effort and provide guidance to staff, we respectfully ask the Board to direct CARB staff to (1) engage the airline industry directly before it finalizes this document, (2) work to gain a more thorough understanding of the role air transportation plays in the freight transportation system, especially as it relates to the economic value of the goods transported, and (3) understand the effect of federal law on the State’s authority to regulate air transportation and tailor its recommendations regarding regulatory policy and initiatives accordingly.

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³ See *Freight Facts and Figures 2013* (U.S. Department of Transportation, Federal Highway Administration), Table 2-2.

⁴ See *2015 Pocket Guide to Transportation* (U.S. Department of Transportation, Bureau of Transportation Statistics), Table 3-8.

⁵ See also *Abdullah v. American Airlines, Inc.*, 181 F.3d 363, 370 n.10 (3d Cir. 1999) (aviation regulation is an area where “[f]ederal control is intensive and exclusive.”) (quoting *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (1944)).

⁶ See also *Rowe v. N.H. Motor Transp. Ass’n*, 128 S. Ct. 989 (U.S. 2008) (reaffirming *Morales* and its broad interpretation of ADA preemption).

⁷ These proposals include “regulations to accelerate penetration of zero emission equipment and vehicles,” a “zero emission aircraft taxi regulation,” “an emissions cap” for airports and “incentiviz[ing] cleaner aircrafts to come to California.”

Thank you for your consideration. Please let me know if you have any questions regarding our comments.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Tim", written in a cursive style.

Timothy A. Pohle
Senior Managing Director, Environmental Affairs