



Airlines for America®

We Connect the World

September 22, 2022

Submitted electronically at:

Clerks' Office
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Airlines for America® Comments on CARB's *Proposed 2022 State Strategy for the State Implementation Plan (August 12, 2022)*

Dear Sir/Madam:

Airlines for America® ("A4A"), the trade association for the leading U.S. passenger and cargo airlines,¹ appreciates the opportunity to comment on the California Air Resources Board's ("CARB") *Proposed 2022 State Strategy for the State Implementation Plan* made publicly available on August 11, 2022 and dated August 12, 2022 ("*Proposed State SIP Strategy*").²

A4A and our members embrace our responsibility to address the environmental impacts associated with aviation and, as detailed in the "Background" section below, have a very strong environmental record that demonstrates our commitment to reducing such impacts even as we continue to provide air transportation services critical to maintaining the growth and vitality of the national, California, and local economies. A4A's commitment extends to reducing emissions that can affect local air quality including greenhouse gases ("GHGs") and emissions of criteria pollutants, including particulate matter ("PM") and oxides of nitrogen ("NOx"). Commercial airlines are dedicated to providing air transportation services to the public that, above all, ensure the safety of our passengers, crew, and the larger public. We view responsible environmental stewardship as essential to our business and have embraced the need to work proactively to address environmental concerns and achieve concomitant public health objectives. Accordingly, A4A and our members fully support the State's efforts to attain National Ambient Air Quality Standards ("NAAQS") and protect public health.

A4A and our members remain committed to working with CARB to attain the NAAQS. In that spirit, we offer these comments in hopes they will be helpful to assist CARB as it works to refine the *Proposed State SIP Strategy*.

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

² See *Proposed State SIP Strategy*, https://ww2.arb.ca.gov/sites/default/files/2022-08/2022_State_SIP_Strategy.pdf (last visited Sept. 12, 2022).

I. Background

Commercial aviation has been an indispensable pillar of our national, state, and local economies for decades. Prior to the onset of the COVID-19 pandemic, commercial aviation helped drive over 10 million U.S. jobs and over 5 percent of U.S. Gross Domestic Product (“GDP”). In California, according to the most recent Federal Aviation Administration (“FAA”) analysis, civil aviation accounts for about 5 percent of jobs (over 1.15 million in 2016) and drives over 4 percent of State GDP (\$109.1 billion in 2016).³ Economic impact studies likewise have affirmed the critical importance to local economies of aviation activity at California’s major airports.⁴

The record of the U.S. airline industry demonstrates that we can grow and help the country prosper even as we continue to improve our environmental performance. For example, between 1978 and 2021, the U.S. airlines improved their fuel efficiency (on a revenue ton mile basis) by more than 135 percent, saving over 5.5 billion metric tons of carbon dioxide (“CO₂”) – equivalent to taking more than 28 million cars off the road on average *in each of those years*. Similarly, since 1975, even as we quintupled the number of passengers served in the U.S., we have reduced the number of people exposed to significant levels of aircraft noise by 94 percent. The U.S. airlines have continually demonstrated their ability to contribute to the nation’s economic productivity, while minimizing their environmental footprint.

This environmental record is not happenstance, but the result of a relentless commitment to driving and deploying technology, operations, infrastructure, and sustainable aviation fuel (“SAF”) advances to provide safe and vital air transport as efficiently as possible within the constraints of the air traffic management system. Indeed, for the past several decades, airlines have dramatically improved their fuel efficiency and reduced their CO₂ and other emissions by investing billions in fuel-saving aircraft and engines, innovative technologies like winglets (which improve aerodynamics), and cutting-edge route-optimization software.

We are committed to limiting and further reducing our industry’s GHG emissions. On March 30, 2021, A4A, together with our member carriers, pledged to work across the aviation industry and with government leaders in a positive partnership to achieve net-zero carbon emissions by 2050

³ See FAA, *The Economic Impact of Civil Aviation on the U.S. Economy –State Supplement* (Nov. 2020), at 10, https://www.faa.gov/about/plans_reports/media/2020_nov_economic_impact_report.pdf (last visited Sept. 12, 2022).

⁴ See, e.g., *Economic Impact Analysis – Los Angeles International Airport in 2014* (April 2016) (620,610 jobs in Southern California, \$37.3 billion in labor income, \$126.6 billion in economic output and \$6.2 billion in state and local taxes), at i, https://laedc.org/wp-content/uploads/2016/04/LAWA_FINAL_20160420.pdf (last visited Sept. 12, 2022); *2019 Economic Impact Study – San Francisco International Airport* (direct impact of 188,111 jobs, \$14 billion in labor income and 42.5 billion in total revenues; total impact of 330,215 jobs, \$25 billion in labor income and \$72.7 billion in total revenues), at 1, https://www.flysfo.com/sites/default/files/SFO_Economic_Impact_Report_2019.pdf (last visited Sept. 12, 2022); *San Diego International Airport Economic Impact Study – June 2018* (direct impact of 67,200 jobs, over \$2 billion in payroll and \$6 billion in economic output; total impact of 116,571 jobs, \$3.9 billion in payroll and \$11.7 in annual output), at 1-2, <https://timesofsandiego.com/wp-content/uploads/2018/09/2017-01-06-economic-impact-study.pdf> (last visited Sept. 12, 2022).

(“2050 NZC Goal”).⁵ This pledge continues our longstanding commitment to embrace our responsibility to address climate change and reduce commercial aviation’s GHG emissions footprint.⁶ With consistent analyses showing that tremendous quantities of SAF must be deployed for the industry to meet its climate goals, A4A carriers also pledged to work with the government and other stakeholders toward a rapid expansion of the production and deployment of commercially viable SAF to make 2 billion gallons available to U.S. aircraft operators in 2030. On September 9, 2021, as a complement to the federal government’s announcement of the SAF Grand Challenge,⁷ A4A and our members increased the A4A SAF “challenge goal” by an additional 50 percent, calling for 3 billion gallons of cost-competitive SAF to be available to U.S. aircraft operators in 2030.⁸ Notably, this SAF challenge goal and the 2050 NZC Goal represent collective minimums, and several A4A members have in fact established even more ambitious goals.

The efforts our airlines are undertaking to further address GHG emissions are designed to limit their fuel consumption, GHG contribution, and potential climate change impacts responsibly and effectively, while allowing commercial aviation to continue to serve as a key contributor to the U.S., global, California, and local economies. At the same time, we continue to build upon our strong record of reducing conventional air pollutant emissions. Our airlines’ primary focus is realizing further fuel efficiency and emissions savings through increasing levels of SAF deployment, modernization and optimization of the air traffic management system, public-private research and development partnerships, and a vast array of additional operational and infrastructure initiatives being undertaken in collaboration with regulators, airports, manufacturers, and other aviation stakeholders. A4A and our members have been particularly focused on developing low-carbon, sustainable liquid fuel alternatives, understanding that the deployment of tremendous quantities of SAF will be key to the achievement of our climate goals.

As a drop-in fuel that currently reduces lifecycle GHG emissions by up to 80 percent compared to conventional, petroleum-based jet fuel (while also helping to improve local air quality) SAF is

⁵ See A4A, *Major U.S. Airlines Commit to Net-Zero Carbon Emissions by 2050* (March 30, 2021), <https://www.airlines.org/news/major-u-s-airlines-commit-to-net-zero-carbon-emissions-by-2050/> (last visited Sept. 12, 2022). On October 4, 2021, the International Air Transport Association (“IATA”) and its member airlines followed suit by also committing to achieve net-zero carbon emissions by 2050. See IATA, *Net-Zero Carbon Emissions by 2050* (Oct. 4, 2021), <https://www.iata.org/en/pressroom/2021-releases/2021-10-04-03/> (last visited Sept. 12, 2022).

⁶ Since 2009, A4A and our members have been active participants in a global aviation coalition. Prior to strengthening our commitment in 2021, we had committed to 1.5 percent annual average fuel efficiency improvements through 2020, with goals to achieve carbon-neutral growth beginning in 2020 and a 50 percent net reduction in CO₂ emissions in 2050, relative to 2005 levels. See A4A, *Major U.S. Airlines Commit to Net-Zero Carbon Emissions by 2050* (March 30, 2021), <https://www.airlines.org/news/major-u-s-airlines-commit-to-net-zero-carbon-emissions-by-2050/> (last visited Sept. 20, 2022).

⁷ See The White House, *FACT SHEET: Biden Administration Advances the Future of Sustainable Fuels in American Aviation* (Sept. 9, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/09/fact-sheet-biden-administration-advances-the-future-of-sustainable-fuels-in-american-aviation/> (last visited Sept. 12, 2022) and Office of Energy Efficiency & Renewable Energy, *Sustainable Aviation Fuel Grand Challenge*, <https://www.energy.gov/eere/bioenergy/sustainable-aviation-fuel-grand-challenge> (last visited Sept. 12, 2022).

⁸ See A4A, *U.S. Airlines Announce 3-Billion-Gallon Sustainable Aviation Fuel Production Goal* (Sept. 9, 2021), <https://www.airlines.org/news/u-s-airlines-announce-3-billion-gallon-sustainable-aviation-fuel-production-goal/> (last visited Sept. 12, 2022).

absolutely vital to our sector. Unlike the on-road transportation sector (cars, trucks, buses, etc.), energy alternatives like electricity and hydrogen will not be sufficiently advanced in the near- or medium-term to make a meaningful contribution to the decarbonization of the aviation sector, meaning that commercial aviation will remain reliant on high energy density liquid fuels for years to come.⁹

Fortunately, we are in a position to succeed because we are not just getting started now. A4A and our members have been working diligently for many years to lay the groundwork for the establishment of a commercially viable SAF industry. In 2006, A4A was instrumental in co-founding the Commercial Aviation Alternative Fuels Initiative[®] (“CAAFI”), which seeks to facilitate the development and deployment of SAF.¹⁰ CAAFI has been integral in obtaining the certification of the seven SAF pathways that are now recognized under the ASTM International specification for aviation turbine fuel from alternative, non-petroleum sources (i.e., ASTM D7566) as well as the two co-processing pathways recognized under the ASTM D1655 jet fuel specification. Nearly all of A4A’s member carriers, moreover, have entered into offtake agreements over the years with SAF producers in a concerted effort to spur the SAF industry and utilize the fuel. These offtakes include (but are not limited to) those of United Airlines, which has been procuring SAF from the World Energy facility in Paramount, CA for use at Los Angeles International Airport (LAX) since 2016, and Alaska Airlines, American Airlines, Delta Air Lines, JetBlue, and Southwest Airlines, which have been using SAF at San Francisco International Airport since 2020 or 2021 (and in JetBlue’s case, also at LAX since 2021). It bears noting, too, that A4A was the original proponent and a key supporter of CARB’s addition of alternative jet fuel as a credit-generating fuel under the Low Carbon Fuel Standard (“LCFS”) Program on a voluntary, opt-in basis. In sum, we have been and remain deeply committed to the development of a commercially viable SAF industry -- in California, throughout the country, and throughout the world.

In addition, over many years A4A and our members have committed the time and resources needed to support the development of economically reasonable, technologically feasible, and environmentally beneficial international standards for aircraft engines and aircraft governing noise, NO_x, PM and CO₂ through the International Civil Aviation Organization’s Committee on Aviation Environmental Protection (“ICAO/CAEP”). In 2020, the ICAO Council adopted emissions standards for non-volatile particulate matter (“nvPM”) for both mass and number applicable to both in-production and new type aircraft engines. A4A supported that effort within ICAO/CAEP and has strongly supported the incorporation of the nvPM standards into U.S. law pursuant to Section 231 of the federal Clean Air Act (“CAA”).¹¹ In addition, A4A worked for years in the ICAO/CAEP process to support development of a CO₂ Certification Standard for aircraft, which ICAO adopted in 2017. We also strongly supported the EPA’s recent adoption of GHG emissions standards for aircraft engines pursuant to Section 231 that are equivalent to the ICAO CO₂ Certification Standard. ICAO/CAEP has focused a great deal of effort on NO_x and we have also strongly supported this effort. As is noted in the CARB’s *Draft 2020 Mobile Source Strategy*, significant progress has been made and as a result of successive, increasingly

⁹ See FAA, *United States 2021 Aviation Climate Action Plan*, (Nov. 2021), at 18-19 (*U.S. 2021 Aviation CAP*) (“there is no realistic option that could replace liquid fuels in the commercial aircraft fleet in the coming decades”), https://www.faa.gov/sites/faa.gov/files/2021-11/Aviation_Climate_Action_Plan.pdf (last visited Sept. 12, 2022).

¹⁰ CAAFI, *Commercial Aviation Alternative Fuels Initiative*, <https://caafi.org/> (last visited Sept. 12, 2022).

¹¹ 42 U.S.C. § 7521.

stringent NO_x standards, aircraft engines produced today must be about 50 percent cleaner than under the initial standard adopted in 1997.¹² A4A also strongly supported the United States Government's proposals to ICAO/CAEP to develop new, more stringent standards for CO₂, NO_x and PM in the present CAEP/13 cycle.

A4A and our members have a long history of working with the South Coast Air Quality Management District ("District") and CARB to reduce emissions at California airports. We are proud of the role we took in working with the District to implement measures in accordance with its 2016 Air Quality Management Plan ("2016 AQMP") to reduce NO_x emissions associated with aviation activity. Specifically, we worked for many months with our airport partners and the District to develop voluntary measures that were eventually incorporated into five memoranda of understanding ("MOUs") between each of the South Coast airports¹³ and the District. All of these MOUs included a voluntary measure to achieve reductions in emissions of ozone precursors from airport ground support equipment ("GSE") more rapidly than would otherwise be achieved under State regulations. As reported to the District's Mobile Source Committee at its January 22, 2021, meeting, despite the extraordinary challenges airports and airlines have faced in the wake of the COVID-19 pandemic, together with our airport partners we have successfully implemented this voluntary program and achieved real NO_x reductions that have brought the District closer to attainment.

II. Comments on the Proposed State SIP Strategy

Development of Proposed SIP Strategies and Scope of These Comments

As an initial matter, we note that the *Proposed State SIP Strategy* does not formally propose regulatory actions or measures, but rather describes potential measures or actions prospectively. As the *Proposed State SIP Strategy* reports, the 2022 State SIP Strategy "is a Statewide planning document" that "describes the State's proposed commitments to develop control measures and reduce emissions from State-regulated sources."¹⁴ Some of the measures proposed are framed as commitments to ask another entity to develop the measure that would result in emissions reductions. For example, the *Proposed State SIP Strategy* states CARB "would petition and/or advocate to U.S. EPA" to take various actions (e.g., promulgating more stringent engine emission standards, "cleaner fuel and visit requirements for aviation," "zero-emission on-ground operation requirements at airports" and "requiring an aviation emissions cap at each California airport."¹⁵ In addition, other measures which could affect non-aircraft sources owned or operated by air carriers (e.g., the proposed "Advanced Clean Fleets Regulation") are described as measures that are under development and will be proposed in the future. In this connection, we underscore that any as yet undefined or prospective measures, actions or initiatives could not be adopted unless they are first formally proposed and subject to full notice and comment requirements under applicable law. A4A and our members expressly

¹² CARB, *Revised Draft 2020 Mobile Source Strategy* (April 23, 2021) at 149, https://ww2.arb.ca.gov/sites/default/files/2021-04/Revised_Draft_2020_Mobile_Source_Strategy.pdf (last visited Sept. 12, 2022).

¹³ These airports are: Hollywood-Burbank Airport (BUR), Long Beach International Airport (LGB), Los Angeles International Airport (LAX), Ontario International Airport (ONT), and John Wayne Santa Ana Airport (SNA).

¹⁴ *Proposed State SIP Strategy* at 1 (emphasis added), *supra* note 2.

¹⁵ *Id.* at 128 – 131 and 186 – 187.

reserve any and all rights to comment on any such regulatory measure, policy or other “mechanism” described in the *Proposed State SIP Strategy*.¹⁶

For certain of the specific proposed strategies, we offer the following comments, which are intended to identify the legal limitations and constraints inherent in the same that CARB will need to address going forward.

CARB’s Proposed Strategies Require Certain Modifications and Clarifications

A. Collaborative Efforts to Develop Approaches to Achieve Emissions Reductions

As we have in the past, A4A and our member carriers will certainly support the efforts described in the *Proposed State SIP Strategy* to work collaboratively with CARB, “EPA, air districts, airports, and industry stakeholders” to develop approaches to achieving emissions reductions, including “voluntary measures and incentive programs.”¹⁷ Again, we fully support the efforts to achieve NAAQS and – as we did during the process to implement the District’s 2016 Air Quality Management Plan – we will look forward to participating in these efforts. We note that any such programs will need to be carefully evaluated and structured to comply with federal law, particularly federal aviation laws that confer exclusive authority to the FAA to regulate air safety, aircraft fuels and aircraft operations.

B. Aircraft Engine Standards

Similarly, we support the view that more stringent standards for aircraft engines can and should be developed at the international level and adopted into U.S. law.¹⁸ In this connection, we welcome CARB’s recognition that it lacks authority to regulate aviation, and therefore such emissions standards for aircraft engines must be developed at the international level through ICAO/CAEP.¹⁹ As pointed out above, A4A and our members have devoted significant time and resources over the years to support development of such standards and their incorporation into U.S. law and we supported the U.S. in advocating for the development of more stringent NOx and PM standards for aircraft engines in the present CAEP cycle.²⁰

¹⁶ Our comments are not intended to constitute a comprehensive or final response to any policy, project, action or measure identified in the *Proposed State SIP Strategy* and do not address each and every proposed action or program identified in the *Proposed State SIP Strategy* that may affect aircraft, GSE or other sources of interest to airlines. A4A incorporates by reference applicable arguments contained in A4A comments on such individual rulemakings and actions.

¹⁷ *Proposed State SIP Strategy* at 116, *supra* note 2.

¹⁸ *Id.* at 128.

¹⁹ 42 U.S.C. § 7521.

²⁰ We must also point out, however, that the characterization of the aircraft and engine standards that have been adopted as standards that “do not reflect the current state of technology” is incorrect. *Proposed State SIP Strategy* at 114, *supra* note 2. Air safety is a nonnegotiable imperative for aviation and, as a result, standards are set to ensure technology necessary to meet the standards has been demonstrated to technology readiness level (TRL) 8, technology that “has been tested and ‘flight qualified’ and [is] ready for implementation into an already existing technology or technology system” that has been flight tested. Accordingly, aircraft and engine standards do indeed reflect current technology. See NASA, Technology Readiness Level (Oct. 28, 2012), https://www.nasa.gov/directorates/heo/scan/engineering/technology/technology_readiness_level (last visited Sept. 12, 2022).

C. Preempted Off-Road Equipment

As noted above, we are proud of our long history of working with CARB to develop reasonable regulations to address GSE emissions, despite continuing concerns regarding the State's authority to adopt and enforce such regulations. Accordingly, while A4A and its members obviously cannot commit to supporting such measures before they have even been developed (much less formally proposed), we will look forward to engaging with CARB as it seeks to develop such regulations.

A4A does have significant concerns regarding CARB's proposal to petition EPA to: (1) promulgate Tier 5 compression-ignition standards and new spark-engine standards for preempted off-road equipment; and (2) require zero-emission standards for off-road equipment where technologically feasible.²¹ CARB acknowledges in its *Proposed State SIP Strategy* that its authority to regulate such equipment under the CAA is outside of its regulatory authority and limited by federal law. Despite this limitation, many of CARB's proposed objectives impact, without exception, categories of off-road equipment integral to aviation operations.

1. **The Federal Aviation Administration, and not the EPA, has exclusive jurisdiction over aircraft and aircraft operations.** CARB's proposed strategy to advocate to EPA for the adoption of emissions reduction standards applicable to off-road equipment could affect the airline industry in numerous ways, including but not limited to: aircraft ground handling and movement at airports, fueling, ground power units, maintenance support, baggage transfer, and on-site aviation support operations. Regulation of aircraft and aircraft operations is clearly and unequivocally within the exclusive jurisdiction of the FAA.²² This pervasive federal regulatory scheme extends not only to aircraft in flight, but also to aircraft-related operations on the ground.²³ The Aviation Act reserves to the FAA *primary and exclusive* jurisdiction over matters related to aircraft operations and safety, the former of which is closely tied to the non-road GSE and non-road vehicles that the air carriers operate at airports. See *City of Burbank*, 411 U.S. at 639.²⁴ Therefore, EPA is without authority to promulgate measures to the extent they would effectively control or otherwise affect the operation of aircraft. Accordingly, CARB's proposal to petition EPA to regulate such equipment is misplaced.²⁵

²¹ *Proposed State SIP Strategy*, at 124-125, see *supra* note 2.

²² The Federal Aviation Act of 1958 ("Aviation Act") establishes "a *uniform and exclusive* system of federal regulation" of aircraft operations that preempts state and local regulation. *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 639 (1973) (emphasis added); see also *American Airlines v. Department of Transp.*, 202 F.3d 788, 801 (5th Cir. 2000) ("[f]ederal control [over aviation] is intensive and exclusive.") (quoting *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (1944)); 49 U.S.C. §§ 40101, 40103, 44701.

²³ See, e.g., 49 U.S.C. § 40103(b)(2)(B)-(C); *City of Houston v. FAA*, 679 F.2d 1184, 1195 (5th Cir. 1982).

²⁴ 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").

²⁵ Under Section 231 of the CAA, EPA must meet requirements in setting emission standards for aircraft engines: (1) the EPA Administrator must consult with the Administrator of the FAA and the Secretary of the U.S. Department of Transportation (DOT) in developing emission standards; (2) the EPA Administrator cannot change standards if doing so would "significantly increase noise and adversely affect safety"; and (3) the President may disapprove any such standards if the DOT Secretary finds that they "would create a hazard to aircraft safety." (42 U.S.C. §7571).

2. **The Airline Deregulation Act (“ADA”) preempts CARB’s ability to regulate off-road equipment related to aviation operations.**²⁶ The ADA provides that a state “may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of [an] air carrier”²⁷ As the Supreme Court has explained, this language “express[es] a broad preemptive purpose,” and ADA preemption applies even if a state law is not expressly designed to affect airline prices, routes, and services, and even if the impact is only indirect.²⁸ Federal courts have held that ADA preemption extends to regulation of off-road airport support vehicles because such equipment is “integral” to carriers’ services.²⁹

With the U.S. Supreme Court’s broad interpretation of the term “related to,” the ADA preempts all state laws that have “a connection with or reference to” airline prices, routes, or services. CARB does not have the authority to implement strategies related to the regulation of off-road equipment that are integral to air carrier operations, to the extent that such actions would impose economic burdens or operational restrictions impacting air carriers’ prices, routes, or services.

3. **CARB also does not have authority to regulate many categories of spark-ignition off-road engines, because CARB’s authority to do so is preempted under the Clean Air Act.** CARB’s *Proposed State SIP Strategy* includes a plan to persuade EPA to adopt CARB’s emissions standards and emissions reduction goals for off-road equipment under 175 horsepower. In its strategy document, CARB states that off-road equipment under 175 horsepower is responsible for approximately 30 percent of the NOx emissions inventory in California, and that it plans to solicit EPA to adopt “standards similar in stringency” to those that CARB is pursuing for non-preempted equipment.³⁰ CARB correctly acknowledges that it does not have authority to regulate these sources under the CAA. Generally, EPA, and not CARB, has authority to regulate emissions from farm and construction equipment under 175 horsepower.³¹ Notwithstanding that, to the extent that CARB intends to petition EPA to regulate such equipment, A4A reiterates that any regulation that applies to off-road equipment that is integral to aircraft operations cannot violate the limitations on CARB’s and EPA’s authority established by federal aviation laws.

²⁶ Airline Deregulation Act, 49 U.S.C. § 41713 (Oct. 24, 1978).

²⁷ 49 U.S.C. § 41713(b)(1). This statutory provision was previously codified at 49 U.S.C. § 1305(a)(1). See 49 U.S.C. App. § 1305(a)(1). In 1994, Congress reenacted this provision at 49 U.S.C. § 41713(b)(1) as part of its reenactment of Title 49, and changed the operative language from “rates, routes or services” to “price, route, or service,” but no substantive change was intended. See *American Airlines v. Wolens*, 513 U.S. 219, 223 n.1 (1995).

²⁸ *Morales v. Transworld Airlines*, 504 U.S. 374, 384, 386 (1992) (holding that ADA preempted state law requirements that expressly referred to airlines and established “binding requirements” upon them); 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).

²⁹ See, e.g., *Federal Express Corp. v. California Pub. Utilities Comm’n*, 936 F.2d 1075, 1078 (9th Cir. 1991) (holding that California’s generally applicable trucking regulation of air carrier’s trucking operations was preempted because such trucking operations “are integral to . . . operations as an air carrier”); *Marlow v. AMR Serv.*, 870 F. Supp. 295, 298-99 (D. Haw. 1994) (finding ADA preemption because GSE (jet bridge) form an “integral part” of air carrier services).

³⁰ *Proposed State SIP Strategy*, at 124-125, *supra* note 2.

³¹ 40 C.F.R. § 1074.10.

4. If CARB does choose to submit a petition, CARB must ensure that its petition acknowledges the exclusive jurisdiction of the FAA over aircraft operations.

Consistent with the discussion above, authority to regulate aircraft operations lies exclusively with the FAA and not with the EPA. Off-road equipment, such as nonroad GSE and vehicles, is intricately connected to the overall air carrier operations and regulation is limited by federal law. Therefore, any petition CARB may make as a result of the strategies set forth in the *Proposed State SIP Strategy* must acknowledge these limitations.

D. Use of Model Rule for Development of Indirect Source Rules

CARB's *Proposed State SIP Strategy* includes potential use of a model indirect source rule ("ISR") for indirect sources which "can be any facility, building, structure, or installation, or combination thereof, which attracts or generates mobile source activity that results in emissions."³² CARB indicates such ISRs would apply to regulation of "warehouses, railyards, ports, airports, and mobile sources attracted to those warehouses, railyards, ports, and airports."³³

A4A disagrees with CARB's proposed broad sweep of ISR coverage. Generally, CARB does not have authority to impose ISRs that set standards on mobile sources. More specifically, CARB does not have the authority to impose such rules on facilities located at airports or apply them to air carriers and vehicles involved in air carrier operations. Accordingly, A4A opposes the implementation of such ISRs and respectfully urges CARB to decline to adopt a model rule that could apply to airports as part of the *Proposed State SIP Strategy*. We explained many of these concerns at length in comments on the South Coast Air Quality Management District's *Proposed Rule (PR) 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions ("WAIRE") Program and PR 316 – Fees for Rule 2305*, which we incorporate here by reference.³⁴ We urge CARB to review our comments on the District's *WAIRE Program* and consider them carefully should it go forward to develop a "model" ISR.

Here we highlight that Congress adopted CAA Section 110(a)(5)(A) as part of the CAA Amendments of 1977, reacting to strong opposition to EPA's attempts to impose controls on indirect sources. The provision prohibits EPA from requiring states to incorporate ISRs in their State Implementation Plans ("SIPs") but allows states to include an "indirect source review program" in their SIPs. However, this did not empower states to enact ISRs of any scope or effect whatsoever. Rather CAA Section 110(a)(5)(A) permits states to incorporate ISRs into their SIPs as long as those ISRs are consistent with limitations established by the CAA and other federal law, including federal aviation statutes.³⁵ Thus, any proposed ISRs must not target air carrier vehicles and aircraft, or operations related to the same, by seeking to impose mandates that would have the direct or indirect effect of imposing emissions standards with respect

³² *Proposed State SIP Strategy*, at 29, *supra* note 2.

³³ *Id.*

³⁴ See A4A Comments on *Proposed Rule (PR) 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions ("WAIRE") Program and PR 316 – Fees for Rule 2305*, May 4, 2021.

³⁵ Importantly, Congress did not authorize states to promulgate ISRs applicable to airports and other "major federally assisted indirect sources," instead allocating that authority to EPA. CAA Section 110(a)(5)(B).

thereto. Additionally, both the CAA and California law carefully clarify that no District has authority to usurp the land use authority vested in cities and counties.³⁶

E. Advanced Clean Fleets Regulations

CARB's proposal to initiate regulations for fleet emissions reductions is outside the scope of CARB's authority as applied to fleets that support aviation operations. Further, these regulations are likely redundant with pre-existing programs, and therefore will create undue compliance burdens for regulated entities.

- 1. CARB cannot regulate fleets that support aviation operations.** CARB proposes to investigate whether to promulgate a rule designed to achieve NOx emissions reductions for certain medium and heavy-duty vehicles.³⁷ As described above, CARB's authority to regulate equipment that is related to aircraft operations is limited. This limitation on CARB's authority not only applies to equipment at airports that relate to airport operations, but also to fleets of medium and heavy-duty vehicles that support, supply, or facilitate aircraft operations that may be subject to this contemplated NOx emissions reduction scheme. *Federal Express Corporation*, 936 F.2d at 1078 (specifying an air carrier's "trucking operations" are not some separate business venture; they are part and parcel of a unified air delivery system).
- 2. Vehicles that are already heavily regulated under other emissions reduction programs should be exempt from the Advanced Clean Fleet regulations.** Further, despite A4A's view that the State lacks the authority to regulate in this area, A4A and its members have cooperated with CARB over many years as it developed a suite of emissions regulations applicable to GSE and other engine types, including its In-Use Off-Road Diesel ("ORD") regulation, the Airborne Toxic Control Measure for Diesel Particulate Matter from Portable Engines ("PE-ATCM") and related Statewide Portable Equipment Registration Program ("PERP") rule, and Off-Road Large- Spark Ignition ("LSI") regulation. In addition, to support efforts to carry out the South Coast Air Quality Management District's 2016 Air Quality Management Plan and the State's SIP, A4A and its members worked very closely with commercial airports in the South Coast Air Basin and the South Coast Air Quality Management District to develop voluntary programs to reduce emissions from GSE even more aggressively than would otherwise be required by already stringent State regulations. Given that A4A and its members are already taking significant measures to reduce emissions from GSE and other engines, regulating these same vehicles under the Advanced Clean Fleet regulations would be redundant and create unnecessary compliance challenges for regulated entities.

³⁶ See Pub. L. 101-549 § 131, U.S. Code Cong. & Admin. News (104 Stat.) 2399, 2689; California Health & Safety Code § 40440(b)(3) (District's authority to promulgate indirect source rules is limited to those actions that are "[c]onsistent with Section 40414);" CA Health & Safety Code § 40716(b).

³⁷ *Proposed State SIP Strategy* at 57, *supra* note 2.

F. Cleaner fuel and visit requirements for aviation

CARB's proposed strategy calls for: (1) aircraft to use "cleaner fuel;" (2) requires visits from "cleaner aircraft;" and (3) use of "zero-emission on-ground operation requirements at airports" when flying through California."³⁸ These concepts were also put forward in CARB's Draft 2020 Mobile Source Strategy, and we explained our concerns at length in comments on that document, which we incorporate here by reference.³⁹ In addition, as stated above, EPA does not have regulatory authority over aviation fuel uses, aircraft engine design, or aviation operations.

1. **CARB's cleaner fuel and visit requirements for aviation are preempted.** Fuel type and use are regulated by the FAA. As a result, the State and its political subdivisions have no authority to implement such strategies.⁴⁰ Federal law has for many decades made clear that the FAA has exclusive jurisdiction over jet fuel:

The Administrator of the [FAA] shall prescribe-

- (1) standards for the composition or chemical or physical properties of an aircraft fuel or fuel additive to control or eliminate aircraft emissions the Administrator of the Environmental Protection Agency decides under section 231 of the Clean Air Act (42 U.S.C. 7571) endanger the public health or welfare; and
- (2) regulations providing for carrying out and enforcing those standards.⁴¹

As noted above, the Aviation Act created a "uniform and exclusive system of federal regulation" of aircraft that preempts state and local regulation.⁴² With the Aviation Act, Congress recognized the critical importance of the FAA's role in maintaining the integrity of aviation fuel for the purposes of ensuring the safety of aircraft operations. It also recognized the statutory policy goal of ensuring aircraft operations (including fuel use) are not subject to a patchwork of state and local laws. Quite simply, Congress recognized the need for FAA to hold the sole and exclusive authority to regulate aviation fuels.⁴³

In addition, the ADA expressly prohibits states from enacting or enforcing any law, as CARB proposes in its strategy, which "related to a price, route, or service of an air

³⁸ *Proposed State SIP Strategy* at 129-131, *supra* note 2.

³⁹ See *Airlines for America Comments on CARB Draft Mobile Source Strategy* (dated November 24, 2020) (December 7, 2020), https://www.arb.ca.gov/lispub/comm/bccomdisp.php?listname=mobilesourcestrat20&comment_num=1&virt_num=1; *Airlines for America Comments on CARB Draft Mobile Source Strategy* (dated November 24, 2020) (October 18, 2021).

⁴⁰ See 49 U.S.C. § 44714 ("Aviation fuel standards").

⁴¹ *Id.*

⁴² See *City of Burbank*, 411 U.S. at 639; see also *American Airlines*, 202 F.3d at 801 (aviation regulation is an area where "[f]ederal control is intensive and exclusive") (quoting *Northwest Airlines, Inc.*, 322 U.S. at 303).

⁴³ A4A comments on *Federal Aviation Administration Notice of Proposed Rulemaking – Airplane Fuel Efficiency Certification*, August 15, 2022.

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 required under the ADA. *Morales*, 504 U.S. at 384. Any attempt to mandate the types of commercial aircraft that may access an airport in California would be a *per se* violation of the ADA’s prohibition on state regulation of routes and services.⁴⁴

- 2. As noted above, airlines are keenly focused on reducing fuel consumption and associated emissions and already work cooperatively with FAA, airports and other stakeholders to seek infrastructure improvements that can optimize flight profiles, reduce taxi times and provide access to clean gate-power.** In addition, airlines have policies to implement single-engine taxiing and use electric ground power in lieu of APUs where safe and feasible – always, of course, subject to the final judgment of the Pilot-in-Command. Accordingly, we urge CARB instead to focus on supporting programs and initiatives that will help improve the efficiency of aircraft operations (e.g., NextGen) and provide funding to improve airport infrastructure (e.g., FAA’s Voluntary Airport Low Emissions (“VALE”) program).

G. Zero-Emission On-Ground Operation Requirements at Airports

CARB proposes to petition and/or advocate to U.S. EPA to promulgate a rulemaking to require zero-emission on-ground operation at California airports.⁴⁵ As stated above, such regulation related to aviation operations equipment is preempted by federal law. See sections A and D above.

H. Airport Aviation Emissions Cap

CARB proposes to petition and/or advocate to EPA for additional actions to control emissions from aviation, including that EPA promulgate a rulemaking to achieve the NO_x emissions reductions for the South Coast by 2037. As proposed, the emissions would (1) be set at each California airport; and (2) encompass all aircraft activities related to the airports with the goal of preventing emissions to increase with airport growth and reducing existing emissions by replacing airport activities with cleaner combustion and zero-emission technologies.⁴⁶

As stated above, such regulation related to aviation operations is preempted by federal law. The implementation of any such regulation would necessarily involve restrictions on the types of aircraft and the frequency of their operations at the referenced airports, which would violate the ADA and clearly exceed EPA’s authority under that Act, as well as the Clean Air Act. Regarding the ADA, see sections A-F above. With respect to the CAA, EPA’s emissions regulation

⁴⁴ *Ventress v. Japan Airlines*, 603 F.3d 676, 681 (9th Cir. 2010) (citing *Morales*, the Court explained that the ADA was enacted to prevent states from “undo[ing] federal deregulation with regulation of their own, it included a preemption provision, providing that ‘a State ... may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier. 49 U.S.C. § 41713(b)(1)’”).

⁴⁵ *Proposed State SIP Strategy* at 131, *supra* note 2.

⁴⁶ *Id.*

authority extends only to emissions from individual aircraft engines, not to collective aircraft emissions at airports.⁴⁷

* * *

Thank you for your consideration of our comments. Please do not hesitate to contact us if you have any questions.

Sincerely yours,



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⁴⁷ 42 U.S.C. § 7571, *supra* note 31.