



Airlines for America®

We Connect the World

April 7, 2023

Submitted electronically

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

Re: Airlines for America® Comments on CARB's 15-day Changes to the Proposed Advanced Clean Fleets Regulation

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") Modified Proposed Advanced Clean Fleets ("ACF") Regulation dated March 23, 2023 ("Modified Proposed Rule") and incorporates our previous comments on the regulation by reference.²

A4A and our members embrace our responsibility to address the environmental impacts associated with aviation and 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 greenhouse gases ("GHGs") emissions and criteria pollutant emissions that can affect local air quality 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 achieve the State's GHG reduction goals and to attain National Ambient Air Quality Standards ("NAAQS") and protect public health.

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 *Airlines for America Comments on CARB's Proposed Advanced Clean Fleets Regulation*, filed electronically on October 27, 2022 and A4A's comments on *CARB's Proposed 2022 State SIP Strategy*, dated September 22, 2022.

I. Background

A4A and our members remain committed to working with CARB to achieve the state's GHG emission reduction goals and attain the NAAQS and appreciate CARB's efforts to modify the regulations in response to comments and feedback that were provided in October 2022.

As noted in our previous comments, A4A reiterates the need for CARB to review the Modified Proposed Rule to ensure it is within the scope of CARB's authority as applied to fleets that support aviation operations. In addition, to the extent these regulations are redundant with pre-existing emissions reductions programs they will create undue compliance burdens and confusion for regulated entities. Accordingly, if CARB proceeds with promulgating the proposed ACF regulation, it should clearly provide exceptions for certain vehicles and equipment related to aviation operations.

A4A has previously provided extensive comments regarding federal preemption and emphasizes once again that 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 FAA – with the necessary expertise and capability to develop and administer those requirements. See *City of Burbank*, 411 U.S. at 639; *Arapahoe Cty. Public Airport Auth. v. FAA*, 242 F.3d 1213 (10th Cir. 2001).³ The regulation of aircraft and aircraft operations is clearly within the exclusive jurisdiction of the FAA.⁴ This pervasive federal regulatory scheme extends not only to aircraft in flight, but also to aircraft-related operations on the ground.⁵ The Federal 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 air carriers operate at airports. See *City of Burbank*, 411 U.S. at 639.⁶

The Airline Deregulation Act (“ADA”)⁷ 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”⁸ The statutory scheme and Congressional purpose reflected in

³ See also *Abdullah*, 181 F.3d at 370 n.10 (aviation regulation is an area where “[f]ederal control is intensive and exclusive”) (quoting *Northwest Airlines*, 322 U.S. at 303).

⁴ 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) (“Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands”); 49 U.S.C. §§ 40101, 40103, 44701).

⁵ 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).

⁶ 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”). EPA has acknowledged that “even small delays at certain hub airports have a ripple effect that can affect the entire national air traffic schedule” and that “space, safety and operational considerations may limit the selection of the specific technologies and the extent to which they can be implemented at any particular airport.” See 77 Fed. Reg. 29167 at 29178-79.

⁷ Airline Deregulation Act, 49 U.S.C. § 41713 (Oct. 24, 1978).

⁸ 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)

the Federal Aviation Act and the ADA make it clear that CARB only has limited authority to regulate off-road equipment. State or local regulation of vehicles and equipment that are integral to air carrier operations is preempted to the extent it would: (1) effectively control or otherwise affect the operation of aircraft; or (2) impose economic burdens or operational restrictions impacting air carriers' prices, routes, or services.⁹

With these limitations in mind, A4A provides the specific comments and feedback below.

II. Specific Concerns with the Modified Proposed Rule

a. Definition of vehicle

A4A recommends that CARB, as the state-level regulator, take a birds-eye view of the current regulatory landscape for fleets. Currently, A4A members are reporting vehicles and fleets in multiple systems (with CARB, the local Air Quality Management District, and other local authorities), and each of these systems contains variances in terms of how emissions and calculated, reporting methods, and specific data points, which results in competing administrative burdens for the airline.

For example, within CARB's own Modified Proposed Rule, the definition of 'vehicle' has been revised to reference section 670 of the California Vehicle Code.¹⁰ The revised definition could be interpreted to include off-road equipment that is also subject to CARB's Large Spark Ignition Regulation. For this particular example, A4A and its members request that equipment subject to the Large Spark Ignition Regulation be exempt similar to the exemption for mobile cargo handling equipment at ports and intermodal rail yards. A4A also recommends that CARB consider the full regulatory scheme that applies to fleets and consider how to provide additional consistency, clarity, and efficiency of reporting methods.

b. ZEV Fleet Milestone Calculation

Under Section 2015.2, CARB modified the definition of a fleet to include, "[i]f a vehicle is operated in California at any time during the calendar year, it will be considered part of the California fleet for the entire calendar year for the purposes of calculating the ZEV Fleet Milestones of section 2015.2(a)".¹¹ This definition is flawed in two significant ways. First, this definition does not account for one-for-one swap outs, therefore the total number of vehicles included in the ZEV Fleet Milestone Calculation will always skew higher than the intended

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).

⁹ In this context, it should be noted that EPA, as a federal agency, has declined to impose technology mandates that could have the effect of compromising the safety of aircraft operations or unduly constraining aircraft operations; See EPA Final Rule, Effluent Limitations Guidelines and New Source Performance Standards for the Airport Deicing Category, 77 Fed. Reg. 29168, 29177 (May 16, 2012) (EPA declines to mandate use of specific technologies at space constrained airports like LGA, JFK and EWR because it was "unable to develop regulatory requirements that would give airports the flexibility they need to avoid significant operational issues and delays"); at 29178-79 (technology mandates inappropriate where they may "lead to unacceptable safety concerns" and "EPA agrees that delays must be a factor in considering today's possible requirements and recognizes that such delays fundamentally affect U.S. and international business and recreational interests").

¹⁰ Appendix A-2, Proposed Regulation High Priority Fleets, at A-2-15.

¹¹ Appendix A-2, Proposed Regulation High Priority Fleets, at A-2-28.

milestone. Many entities plan for fleet upgrades years in advance and take delivery of vehicles throughout the year. By counting both the original vehicle and the new vehicle as part of the fleet that was operated within a given calendar year, CARB is inappropriately inflating the total number of vehicles to be used in the ZEV Fleet Milestone Calculation. Under this methodology, no regulated entity is likely to be able to meet the milestone in a given calendar year because the calculation includes vehicles that are no longer part of the fleet.

Second, CARB has not provided a definition for “a vehicle operated in California”.¹² In aviation, ground support equipment may be moved between airports for training purposes, but not used for their intended operational purpose. It is unclear if this or other atypical uses meets the definition of a vehicle operated within the state.

c. Vehicle Delivery Delay Extension

A4A and its members appreciate CARB’s acknowledgement of potential delivery delays for equipment. For airlines, while there are ZEV options that are operationally feasible, many of the suppliers have limited capacity that would be quickly consumed as all airlines work to changeover their fleet at the same time. Currently, airlines are already seeing extended timelines for the delivery of GSE.

A4A also recommends that CARB revise the last sentence of Section 2015.3(d)(1)(B)(3) as it does not differentiate between an order date and a purchase agreement date, and the deadline of January 1, 2024, currently leaves less than nine months for compliance and the rule has not yet been finalized.

d. Backup Vehicle Exemption

A4A recommends that CARB revisit the changes to the definition for Backup Vehicles. Based on the term, it seems that CARB intended to provide a provision for vehicles that may be brought into operational service if other vehicles in the fleet break down or are no longer operational. However, the changes penalize fleet owners for implementing beneficial operational redundancies by housing backup vehicles. The provision only applies if the vehicle is operated less than 1,000 miles per year, and as soon as a vehicle “no longer meet[s] the criteria” it “cannot be operated in California and must be removed from the California fleet.”¹³

This contradicts CARB’s earlier definition that if a vehicle is operated in California, it should be counted as part of the fleet. Instead of requiring fleet owners to remove backup vehicles from the state altogether if they are utilized beyond the 1,000-mile limit, we suggest that CARB simply change the regulation to count the vehicle as part of the fleet once the Backup Vehicle criteria is no longer met.

e. ZEV Infrastructure Delay Extension and Site Electrification Delays

A4A appreciates CARB’s acknowledgement of potential charging infrastructure and site electrification delays as this is especially relevant in the aviation sector. A4A reiterates its previous concerns over the availability of a reliable and resilient electric grid necessary to transition all airside vehicles at California airports to electric vehicles. Airlines are already

¹² Id.

¹³ Appendix A-2, Proposed Regulation High Priority Fleets, at A-2-34.

experiencing long delays for the installation of electrical infrastructure components – electrical panels, transformers, etc.

Airports, not its tenants (including airlines) control the installation of the charging infrastructure necessary to support the transition to electric. Many airports also have significant space constraints that will require a careful choreography of multiple types of vehicles as GSE is transitioned from ICE to ZEV. As a result of space constraints, planning for the design and location of where the chargers should be installed is a challenge. There are instances where space is such a constraint that the only option is to locate the chargers far from where the equipment is being used – which has further implications for a time-sensitive industry such as aviation. At other California airports, many aircraft gate areas have no additional space for charging infrastructure, and the extension process proposed in the revised language would not resolve this issue.

The new provisions in Section 2015.3(c) wrongly assume that there is always a direct relationship between the fleet owner and the utility provider and would require airlines to provide documentation such as executed contracts, permits, and other documentation that may not be within the purview of an airport lessee. In many cases, the airport serves as the airlines' utility provider, while the airport manages the agreement with the utility provider.

The revised language states that the extension may be “up to two years, beginning on the applicable compliance date for the number of vehicles that qualify for the extension”, but this is an unknown quantity as on-airport charging facilities may have shared charging stations utilized by all carriers operating at the airport. By requiring fleet owners to “deploy the maximum number of ZEVs needed to meet its compliance obligations and that can be supported by the utility” in Section 2015.3(c)(2), CARB is failing to take into account that airports have multiple fleet owners utilizing the same charging capacity and the “maximum number” for one entity is mutually dependent on the charging demand of all of the other owners and operators. Lead times to procure and install chargers are a minimum of 18-24 months.

The new documentation required for the extension under the ZEV Infrastructure Site Electrification Delays (Section 2015.3(c)(2)(C)), includes the application, or a copy of utility contract, “consistent with the number of ZEVs the fleet owner must deploy each calendar year”, which fails to take into account how a grid is operated and upgraded. Utilities do not make annual individual infrastructure upgrades in the piecemeal manner that is anticipated by this proposed regulation. Electrification efforts should consider all efforts in and around the airport space, including gate electrification, rental car facilities, airport shuttles, etc. Further, utilities cannot provide guarantees of construction timelines or grid upgrades as these needs are subject to other priorities, including responding to storm events, prevention of outages, and other grid priorities. To implement ZEV-GSE at the scale that CARB is proposing, the respective airport authority, the airlines, and the utility would need to develop a comprehensive and methodical plan to ensure the charging infrastructure can meet the full level of expected demand for the 100% milestone.

Due to the unique requirements of aviation GSE, A4A and its members recommend that CARB provide a categorical exemption for all GSE that cannot be implemented due to site limitations (e.g., space constraints, availability of charging infrastructure, etc.). A4A recommends that the Executive Officer provide a process that considers a comprehensive approach for aviation sites in order to prevent the duplication of efforts among airport tenants.

f. ZEV Purchase Exemption List

We encourage CARB to consider that GSE includes several unique vehicle types when determining which vehicles to include on the Purchase Exemption List. A manufacturer may market a particular vehicle that appears to be a sufficient substitute for ICE GSE, but that does not mean that the vehicle is commercially available or operationally feasible. Simply because electric models of equipment or vehicles are available in the marketplace does not necessarily mean that they will be able to perform the functions required. For example, at some California airports aircraft may need to be towed considerable distances and electric equipment may not have the capacity to complete this task. A4A and its members anticipate submitting exemption applications to include GSE as allowed under Section 2015.3(e)(2)(B) and are concerned that CARB staff may not duly consider that in some instances operational demands may require more pieces of equipment to perform required tasks because, while one traditionally-fueled vehicle may be capable of longer, more taxing duty cycles, electric equipment may require frequent charging, requiring more vehicles/equipment to ensure that carrier operations are not interrupted (thereby increasing the overall fleet size). In addition to providing an exemption from requirements when a ZEV option is not commercially available, CARB also needs to include an exemption when a ZEV option is not operationally feasible.

While Section 2015.3(e)(1)(A) considers a large number of configurations, many of the truck types are undefined, therefore it is unclear if a particular type of GSE falls within the list (e.g., is a catering truck with a lift included or a stair truck, for which there is no electric version available). Further, due to the varied and unique nature of GSE, there is no guarantee that an Original Equipment Manufacturer (OEM) will be able to manufacture such equipment in quantities sufficient to fulfill demand or deliver equipment on a schedule required to meet compliance deadlines. These substantial costs and logistical challenges must be considered by CARB in its final rulemaking, and appropriate mitigation paths to address market penetration shortfalls should be considered. A4A looks forward to working with CARB to ensure that the list accurately reflects the reality of operations in the aviation space.

III. Conclusion

A4A commends CARB on its efforts to reduce GHG emissions within the state of California. As the most recent updates to the proposed rule result in meaningful implications for the aviation sector, A4A requests that CARB consider making further clarifications to the proposed regulatory language to address the issues outlined above. used by the aviation industry from the scope of its Modified Proposed Rule. Thank you for your consideration of our comments. Please do not hesitate to contact us if you have any questions.

Sincerely yours,



Tim A. Pohle
Vice President
Environmental Affairs
Airlines for America
tpohle@airlines.org



Kenley Farmer
Director
Environmental Affairs
Airlines for America
kfarmer@airlines.org