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Ms. Cheryl Laskowski
Chief, Transportation Fuels Branch
Industrial Strategies Division
California Air Resources Board
P.O. 2815
Sacramento, CA 95812

Re: Airlines for America® Input on the February 22, 2023, Public Workshop to
Discuss Potential Changes to the Low Carbon Fuel Standard

Dear Ms. Laskowski:

Airlines for America® (A4A), the principal trade and service organization of the U.S. airline industry,¹ appreciates the opportunity to provide feedback on the California Air Resources Board's (CARB) February 22, 2023 public workshop on potential future changes to the Low Carbon Fuel Standard (LCFS) Program, including those reflected in the [Draft Regulatory Text](#) document shared as part of that workshop.²

As detailed in our January 7, 2022 letter providing input on CARB's December 7, 2021, workshop, the U.S. airline industry has a strong climate change record and has committed to working across the aviation industry and with government leaders in a positive partnership to achieve net-zero carbon emissions by 2050 (2050 NZC Goal). This parallels the Biden Administration's goal to achieve net-zero greenhouse gas (GHG) emissions in the aviation sector by 2050. Airlines, governments – including California – and other aviation stakeholders have also recognized that achieving net zero aviation emissions by 2050 will require a very rapid transition from conventional (fossil) jet fuel (CJF) to sustainable aviation fuel (SAF). Accordingly, A4A and our members have also set a goal of making 3 billion gallons of cost competitive SAF available to U.S. aircraft operators in 2030 (2030 SAF Goal), a goal that mirrors the Biden Administration's SAF Grand Challenge Goal. Airlines are pleased to share these mutually reinforcing goals with the federal government, particularly as aviation is universally recognized as a “hard to abate” sector which will only be successfully decarbonized through strong cooperation and partnerships between governments and aviation stakeholders, including airlines.

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 <https://ww2.arb.ca.gov/our-work/programs/low-carbon-fuel-standard/lcfs-meetings-and-workshops>.

In this context, we appreciate that California has also adopted a very ambitious net-zero emissions goals and recognized that SAF will be essential to meeting its goal.³ We again emphasize our great appreciation for CARB's past and ongoing support for SAF, which CARB refers to as alternative jet fuel (AJF). We look forward to working with CARB on measures that will rapidly expand availability and deployment of AJF in California.

We do have some significant concerns about the regulatory concepts put forward by CARB during this workshop, particularly the concept of including CJF as an obligated fuel under the LCFS program. As an initial matter, we are concerned that to date CARB has not provided any analysis regarding the potential impacts that would attend adoption of this concept. In addition to providing (as noted below) an explanation of the legal authority it would rely upon, CARB must also carefully study the economic, social and environmental impacts of any proposal, and prepare a thorough cost-benefit analysis during the workshop process to inform these stakeholders before commencement of any formal rulemaking regarding the full range of consequences from the proposed action, so that there can be meaningful participation in the process. We provide additional comments below.

1. CARB Cannot Subject Intrastate CJF to the LCFS Program

CARB first raised the prospect of adding CJF used in intrastate operations in its December 7, 2021 workshop. Our January 7, 2022, letter detailed the reasons CARB does not have the legal authority to subject CJF used in intrastate flights to annual carbon intensity (CI) reduction requirements. We reiterated the point in our August 8, 2022, comments provided in response to CARB's July 7, 2022, Low Carbon Fuel Standard Workshop. In summary, given federal preemption of state and local regulation of aviation fuels, aircraft emissions and aircraft operations both in the air and on the ground, the State lacks authority to include conventional (fossil) jet fuel (CJF) as a required fuel in the LCFS program.⁴ We are also concerned about the disproportionate impacts of these proposals on stakeholders in jurisdictions outside of California and recommend CARB consider the limitations of the dormant Commerce Clause to its proposals.

³ CARB's [presentation for the February 22, 2023 workshop](#) references Governor Newsome's July 2022 to the CARB Chair requesting that CARB "adopt an aggressive 20% clean fuels target for the aviation sector," a request that CARB reflected in its [2022 Scoping Plan for Achieving Carbon Neutrality](#) which assumes "20% of aviation fuel demand is met by electricity (batteries) or hydrogen (fuel cells) in 2045" and that "[s]ustainable aviation fuel meets most or the rest of the aviation fuel demand that has not already transitioned to hydrogen or batteries."

⁴ See, e.g., 49 U.S.C. § 44714 and 42 U.S.C. § 7573. In addition, the proposed concept is preempted by the Federal Aviation Act of 1958 and the Airline Deregulations Act (ADA). 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 is an area where "[f]ederal control is intensive and exclusive") (quoting *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (1944); *Burbank-Glendale-Pasadena Airport Authority v. City of Los Angeles*, 979 F.2d 1338, 1341 (9th Cir. 1992) (Federal Aviation Act preempts any regulatory "interference" with "operations of aircraft" on the ground). The ADA precludes state from "enact[ing] or enforc[ing] a law, regulation, or other provision having the force and effect of law related to price, route or service." 49 U.S.C. § 41713(b)(1).

We are very concerned that CARB has again raised this concept in the February 22, 2023, workshop presentation (available [here](#)) and Draft Regulatory Text (available [here](#)). In response, we refer CARB to the comments on this subject provided in our January 7, 2022, and August 8, 2022, letters (which we incorporate here by reference⁵) and again respectfully ask that this potential regulatory change be deferred from further consideration by CARB staff.⁶ We also repeat our request that, should it opt to pursue this concept, CARB to explain the reasons it believes the state agency has sufficient legal authority to do so.

2. Making Airlines the First Fuel Reporter for Intrastate Jet Fuel Use Creates Undue Burden on Airlines

In its February 22, 2023, workshop and accompanying draft regulatory text, CARB states that it is considering making airlines the first fuel reporter for intrastate use of CJF for the stated purpose that it “could assist in delineating intrastate jet fuel use.” As stated above, California is preempted from including CJF as a required fuel in the LCFS program; accordingly, requiring airlines to provide information to serve a purpose California is not authorized to pursue is inherently unduly burdensome.

In addition, should CARB go forward with this concept it would need to provide much more detail as to the type of information that would be required of airlines and the reporting procedures (e.g., to verify the information) that would be required, for airlines to be in a position to provide meaningful comments on the substance of any such requirement. We also note that under the concept put forward here “[i]ntrastate jet fuel use is fuel consumed during any flight that takes off and lands within California.” Entities other than commercial airlines (e.g., business jet operators and the military⁷) also use jet fuel consumed during such flights. If this concept were taken forward, CARB would thus need to provide details as to what information from business jet and military jet operators would be collected.

3. The LCFS Program Should Not Cap Crop-Based Biofuels

The February 22, 2023 workshop, CARB stated it is continuing to seek public comment on potential limits on crop based fuels under the LCFS program. A4A and its members concur with CARB that “biofuel production must not come at the expense of deforestation or food production” and towards that end urge CARB to continue relying on its robust carbon intensity methodology for assessing land use change,⁸ including a quantification of the indirect effects associated with crop-based biofuels. The analytical, science based methodologies used by CARB provide the necessary controls on feedstocks and fuels to ensure environmental integrity. As the available science continues to evolve, these models can be and are updated. As stated in our August 8, 2022, letter, we see no need for CARB to consider imposing a cap on such biofuels (e.g., fuels derived from soybean or other vegetable oils or corn) to provide additional

⁵ The January 7, 2022, letter is available [here](#); the August 8, 2022, letter is available [here](#).

⁶ A4A and our members expressly reserve the right to amend or supplement this feedback by filing detailed comments if and when this particular change or any other revisions of the LCFS regulation are formally proposed by CARB.

⁷ Under 17 CCR §95481(a)(33): “‘Conventional Jet Fuel’ means aviation turbine fuel including Commercial and Military Jet Fuel. Commercial Jet Fuel includes products known as Jet A, Jet A-1, and Jet B. Military Jet Fuel includes products known as JP-5 and JP-8.”

⁸ See 17 CCR § 95488.3.

assurance that the production and use of these fuels will not have adverse impacts and urge CARB to refrain from imposing one. In this connection, we note that CARB's carbon intensity/lifecycle greenhouse gas emissions modeling and analysis should be based on the most up-to-date science and data, ensuring that CARB's regulatory structure accurately assesses the potential impacts of any land use change.

CONCLUSION

A4A very much appreciates and applauds CARB's desire and actions to develop a market for SAF in California. The existing opt-in crediting model, combined with US federal incentives has been highly successful, in drawing the majority of SAF deployment to date into California. California's leadership in this regard is well noted nationally and internationally. However, CARB is legally precluded from adding intrastate CJF as a deficit-generating fuel and thereby subjecting it to the LCFS Program's annual CI limits. Again, should CARB nevertheless move forward with this potential regulatory change, it certainly needs to explain in sufficient detail why it believes it has the legal authority to subject intrastate CJF to annual CI limits.

* * *

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

Sincerely,



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