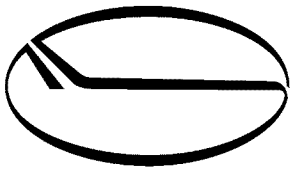

Air Transport Association

August 1, 2008

Via Electronic Submittal

Mary D. Nichols
Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: Climate Change Draft Scoping Plan Pursuant to AB 32, the California Global Warming Solutions Act (June Discussion Draft)

Dear Ms. Nichols:

The Air Transport Association of America, Inc. (ATA)[1] is pleased to have this opportunity to comment on the California Air Resources Board's (ARB) June 26, 2008 Climate Change Draft Scoping Plan Pursuant to AB 32, the California Global Warming Solutions Act ("Draft Scoping Plan"). If there is one fact that ARB and other California climate change policymakers need to bear in mind when considering the commercial aviation sector it is this: greenhouse gas (GHG) emissions from the commercial aviation sector in California are ***41% below 1990 levels*** -- while at the same time aviation is contributing far more to the California economy, transporting ***17% more passengers*** and ***over 400% more cargo***.[2] Few if any other sectors in California can match aviation's record in this regard.

As an initial matter, ATA reserves the right to comment on the Draft Scoping Plan at a later date. While we understand that ARB set an August 1 deadline for submitting comments, we also understand that that the Draft Scoping Plan is closely tied with several other on-going ARB efforts to implement AB 32. First, the Appendices to the Draft Scoping Plan were released

[1] 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. The members of ATA are: ABX Air, AirTran Airways, Alaska Airlines, American Airlines, ASTAR Air Cargo, Atlas Air, Continental Airlines, Delta Air Lines, Evergreen International Airlines, Federal Express, Hawaiian Airlines, JetBlue Airways, Midwest Airlines, Northwest Airlines, Southwest Airlines, United Airlines, UPS Airlines, and US Airways; the associate members are: Air Canada, Air Jamaica, and Mexicana.

[2] The emissions data is derived from the ARB Inventory (included as Appendix F to the Draft Scoping Plan); the transport data is derived from the U.S. Bureau of Transportation Statistics' T-100 Market data. All comparisons are with 2004, the last year covered by the ARB Inventory.

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just last week on July 22, and ATA has not had time to complete its review of them. Second, ARB has indicated that later this summer it will release an "evaluation supplement" to the Plan setting forth the results of its on-going economic, environmental and public health evaluations of the Plan. (Draft Scoping Plan at 14.) This clearly will be a critical document. Finally, the Western Climate Initiative's Draft Design Recommendations also were released just last week on July 23. As noted in the Draft Scoping Plan, major aspects of ARB's climate change efforts are integrated with the WCI's program. Moreover, the "Background Document" for the WCI Draft Design Recommendations has yet to be released, even though it likely will provide critical detail. (The WCI Draft Design Recommendations document is only ten pages long.) ATA therefore reserves the right to supplement these comments as we complete our review of these other documents that will constitute integral elements of California's plan to implement AB 32.

We welcome ARB's continuing commitment to stakeholder participation in the AB 32 implementation process and look forward to participating in the ARB workshops between now and the adoption of the final AB 32 Scoping Plan later this year.

Introduction.

On behalf 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 GHG emissions particularly seriously, and have for many years. We commend California for its leadership and seek to work with the state as we continue our own work of many years on the critical challenges posed by climate change.

Aviation's Independent Efforts to Reduce GHG Emissions

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 almost 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) improved fuel efficiency 110% between 1978 and 2007. The airlines also have improved absolute fuel burn. U.S. carriers burned ***2.6% less fuel in 2007 than in 2000***, even though they carried ***20.4 % more passenger and cargo traffic*** on a revenue ton mile basis. Few if any other industries can match this record.

And our industry is dedicated to building upon this strong record. ATA members have committed to improving fuel efficiency another 30% from 2005-2025. Further, recognizing that improving fuel efficiency with today's carbon-based fuel supply can only take us so far, ATA and its airlines are making extensive resource commitments to stimulate the development of commercially viable, environmentally friendly alternative fuels. As a framework for doing this,

ATA is a founding and principal member of the Commercial Aviation Alternative Fuels Initiative (CAAFI), a consortium of airlines, government, manufacturers, fuel suppliers, universities, airports and other stakeholders that hold the keys to research, development and responsible implementation of alternative jet fuels. Because developing alternative jet fuels presents a "higher hurdle" than doing so for ground-based units, due both to technological differences and because jet fuel must meet rigorous FAA specifications, fuel providers almost certainly would not undertake the investments needed to clear this higher hurdle without CAAFI. ATA airlines understand that they must not only make clear their specifications for alternative jet fuels, but also must signal the market that they will back fuels meeting those specifications. On Earth Day this year, the ATA Board of Directors issued the "ATA Alternative Fuels Principles Document," which stipulates, among other things, that the ATA carriers require that any future alternative jet fuel be more environmentally friendly, on a life-cycle basis, than the jet fuel available today. Through CAAFI and other partnerships, ATA is undertaking the work to ensure that tomorrow's alternative jet fuel meets that criterion of environmental improvement.

The Policy Implications

From a policy perspective, four points cannot be overemphasized. First and foremost, the commercial aviation industry is ***not*** in need of a "price signal" to stimulate emission reductions. Commercial airlines already are driven by the economic imperative to reduce fuel burn and thus also emissions as much as possible. Recent developments only underscore this point. As oil prices have skyrocketed in recent months, aviation fuel prices have risen even faster. Through July 29, jet fuel prices are 71% higher than they were just last year. Jet fuel remains the industry's highest cost center and alone represents 30 to 40% of commercial carrier costs; for some carriers fuel costs are closer to 50% of overall costs. ATA projects that the U.S. airlines' bill for jet fuel will rise $20 billion this year, from $41.2 billion to $61.2 billion. The effect of this economic incentive is not merely theoretical. While our carriers' long-term record on fuel efficiency shows that saving fuel and reducing emissions has been our business imperative for years, with the most recent surges in fuel prices our carriers have announced even more dramatic measures to improve performance. These include cutbacks in service and grounding the oldest, most fuel-inefficient aircraft in our fleets.

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, regardless of whether jet fuel prices continue to skyrocket past even today's record levels. Economic realities dictate the commercial aviation industry will continue to do everything it can to conserve fuel and increase the value of every gallon burned to our local, national and world economies. Indeed, these economic realities are becoming so acute of late that several commercial airlines have recently been forced to go out of business, and service to many communities throughout the U.S. -- including many within California -- has been cut back or eliminated entirely. In short, no further price incentive to conserve fuel is necessary; the market already has sent an unwelcome price signal -- "Stop."

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. Our own investment in technology and more fuel-efficient operations has been the predominant and indispensable ingredient in our historic success and will remain essential to our continued success in the future. 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. If a climate change regulatory program should require the airline industry to pay out even greater costs, it would further siphon away money needed for investment in new technology, doing nothing to improve the environment and running counter to the goals of AB 32.

Third, with flights spanning several states or even several countries and intrastate flights feeding into a larger airspace system, state-based regulation of this mobile industry can be particularly problematic. Specifically, there is an issue of redundant (and potentially conflicting) schemes between various governments, potentially leading to several different regulatory structures for the same ton of carbon emitted. In addition to this being costly and administratively difficult (not just for the airlines, but also for the regulatory agencies), it also creates significant jurisdictional problems.

Finally, in the context of the implementation of any sub-national program, it's important to emphasize that airlines operate in a uniquely competitive environment. Our members operate networks that span the entire U.S. 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.

The California Context

It's important to recognize the factual and legal aspects of the California context. The factual context includes both the aviation sector's record on emissions and the sector's current emissions vis-à-vis other sectors. According to the ARB Inventory (Appendix F to the Draft Scoping Plan), the 2002-2004 average of intrastate aviation GHG emissions was 3.2 $MMTCO_2E$, the transportation sector as a whole was 179.3 $MMTCO_2E$, and the state's total net GHG emissions was 468.8 $MMTCO_2E$. (Appendices at F-7 and F-8.) This data highlight two facts:

- First, aviation emissions are already well *below* 1990 levels. Intrastate aviation GHG emissions in 1990 were 5.13 $MMTCO_2E$ -- *nearly double current levels*. (Appendices at F-9.) Of course, we need not remind ARB that AB 32 establishes 1990 levels as the 2020 limit for GHG emissions; thus, if AB 32 were to be implemented uniformly across all sectors, aviation already would be well ahead.

- Second, emissions from aviation represent a tiny fraction of the state's GHG emissions. Intrastate aviation currently accounts for just 1.79% of the transportation sector and only 0.68% of the state's total GHG emissions.[3]

Certain aspects of the legal context in California also must be recognized. As ARB has noted, "the State does not have regulatory authority over aviation." (Appendices at C-7.)[4] This is not the place for a legal brief; however, it bears mention that, as ARB has recognized, under our federal system the aviation sector is regulated by the federal government.[5] This applies as much to intrastate aviation as it does to interstate aviation.

Comments.

Against this backdrop, ATA offers the following general comments on the Draft Scoping Plan. As noted at the outset, we reserve the right to submit additional comments as ARB further develops the AB 32 Scoping Plan. As also noted above, we offer these comments in a spirit of cooperation. We wish to work with ARB in meeting the challenges of climate change.

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[3] We note that there is a typographical error in Appendix C. At C-21, the Appendices state that, "Jet fuel used in intrastate plane trips accounts for approximately 2 percent of *California's* GHG emissions." As noted above, intrastate aviation actually accounts for less that 2% of the transportation sector only; it accounts for well under 1% of California's GHG emissions. Figure 2 on the preceding page more correctly indicates that "airplanes (intrastate only)" accounts for 2% of the transportation sector (and passenger vehicles account for 74%).

[4] This legal limitation also bears on the Low Carbon Fuel Standard (LCFS), and thus ARB correctly recognizes that "the LCFS would not apply to certain aviation and marine fuels that ARB lacks the authority to regulate." (Appendices at C-27.)

[5] Nowhere is this more clear than in the Clean Air Act (the "CAA"). Title II of the CAA, CAA §§ 201-250, 42 U.S.C. §§ 7521-7590, which governs control of pollution from mobile sources, specifically provides that the U.S. Environmental Protection Agency ("EPA") has responsibility for establishing and enforcing standards for the control of emissions from such sources. Thus, Congress expressly determined to preempt state regulation of mobile source emissions, and this intent is unequivocal in part B of Title II governing aircraft emissions: "No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part." CAA § 233, 42 U.S.C. § 7573, *see also, Motor Vehicle Mfrs. Ass'n v. New York Dep't of Envtl. Conservation*, 17 F.3d 521, 524 (2d Cir. 1994) (it is fundamental to the CAA statutory scheme that "the cornerstone of Title II is Congress' continued express preemption of state regulation" of mobile source emissions. *Id.* at 526. *See also Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 639 (1973) (holding that the Federal Aviation Act establishes "a uniform and exclusive system of federal regulation" of aircraft operations that preempts state and local regulation).

First, as a general matter, we believe that it's important that ARB and other policymakers be aware of our industry's strong record with respect to GHG emission reduction -- GHG emissions from commercial aviation in California already are already 41% below 1990 levels -- and they therefore should take measures that reinforce rather than impede our continuing efforts to improve. In light of the current economic realities facing the industry and its commitment to continual emissions efficiencies, it is important to develop policies that help aviation to improve rather than impose unnecessary costs. This is particularly important in California, to the extent that it has assumed a leading role among states in its efforts to address climate change.

Second, ATA recognizes that all sectors of the economy must do their part to address GHG emissions. That said, when it comes to prioritizing the emission reduction efforts, it only makes sense to focus first on those sectors where the greatest emission reductions can be achieved. We respectfully submit that it makes little sense to allocate scarce regulatory resources to further reducing GHG emissions in the aviation sector -- a sector which, as noted above, has an unparalleled record of independent GHG emission reductions.

This leads us to question the regulatory priorities that led to the emphasis on high speed rail (HSR) in the Draft Scoping Plan. Our concern is particularly acute given that the support for HSR appears to be motivated in part by aviation emissions:

> "Emissions from the fuel used in planes is an important consideration, however, the State does not have regulatory authority over aviation. ARB has not identified aviation specific measures; however, successful deployment of High Speed Rail could divert some air passengers to rail."

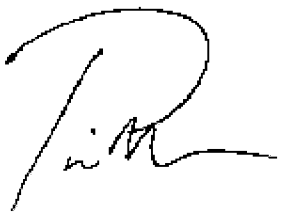
(Appendices at C-21.) However, as noted in Table 2 of the Draft Scoping Plan (Draft Scoping Plan at 11), HSR would contribute just ***one*** $MMTCO_2E$ in reductions toward the state's overall GHG emission reduction goal. This estimate is "based on the benefits of displacing air passengers and motor vehicles passengers minus the energy to operate HSR." (Appendices at F-36.) This estimate may well be high, given aviation's unparalleled record of GHG emission reductions and our commitment to continual GHG efficiency improvements. The cost of GHG emission reductions from HSR currently is estimated -- at this early stage prior to voter approval -- to be $40 billion. (Appendices at C-27.) Clearly, this is a very expensive way to achieve GHG emission reductions that are both uncertain and modest at best. It is apparent that it would be unwise to spend $40 billion to reduce emissions a mere ***one*** $MMTCO_2E$ (with 40 years of emissions reductions costing $1000 per $MMTCO_2E$) -- and to do so by diverting millions of passengers away from a mode of transport that already has reduced its emissions nearly twice that amount since 1990 while continuing to provide far more economic benefit to the state.

Conclusion.

ATA is pleased to have this opportunity to comment on the Draft Scoping Plan, and we respectfully reserve the right to supplement these comments as we complete our review of recently released documents such as the Appendices and the Draft Design Recommendations

-- and as other critical elements of the Plan are developed in the weeks and months to come. We look forward to participating in the ARB stakeholder participation process between now and the adoption of the final AB 32 Scoping Plan later this year.

Sincerely,



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