

**BEFORE THE
ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

**Control of Air Pollution From Airplanes and Airplane Engines: GHG
Emission Standards and Test Procedures**

**Notice of Proposed Rulemaking
Docket No. EPA-HQ-OAR-2018-0276**

COMMENTS OF THE CARGO AIRLINE ASSOCIATION

INTRODUCTION

By publication in the August 20, 2020, edition of the Federal Register (85 Fed. Reg. 51,556 et seq.), the Environmental Protection Agency (EPA or “the Agency”) is proposing greenhouse gas (GHG) emission standards applicable to certain classes of engines and airplanes. These proposed standards are intended to align with the airplane CO₂ standards adopted by the International Civil Aviation Organization (ICAO) in 2017. With the issuance of this Notice of Proposed Rulemaking (NPRM or “proposed rule”) and consistent with administrative procedures, EPA has solicited public comment. Following are the comments of the Cargo Airline Association.

I. THE CARGO AIRLINE ASSOCIATION AND THE INDUSTRY

The Cargo Airline Association is the nationwide trade organization representing the all-cargo airline industry before federal agencies, Congress, and the various states and localities.¹

¹ Airline members of the Cargo Airline Association are ABX Air, Inc.; Atlas Air, Inc.; FedEx Express; Kalitta Air, Inc.; and United Parcel Service.

Association members operate worldwide aviation systems designed to meet the time-definite delivery needs of customers around the globe.

The United States all-cargo air carriers employ over one million individuals worldwide and account for over 10% of the U.S. GDP. Annual revenues exceed \$100 billion and customers rely on our services to transport high value, time sensitive, products such as medical devices, pharmaceuticals, computers and computer parts, electronics, health care products and automobile parts. Our members utilize aircraft manufactured in the United States and outside the United States, including new purpose-built freighter aircraft, as well as conversions of in-service aircraft for use as all-cargo aircraft as approved by the Federal Aviation Administration through its aircraft certification process, which can include the issuance of a supplemental type certificate. As such, members of the Cargo Airline Association have a significant interest in the outcome of this proceeding.

SUPPORT FOR HARMONIZATION WITH ICAO STANDARDS AND ICAO PROCESS

The all-cargo airline industry fully supports the EPA's proposed rulemaking. Harmonization of global standards ensures uniformity and consistency among a global aviation marketplace. The adoption of this rulemaking, with the modifications discussed below, will help ensure that U.S. manufacturers, and the industry as a whole, are not placed at a competitive disadvantage with respect to international air commerce.

The United States, along with 190 other countries, is party to the Convention on International Civil Aviation -- a convention that established ICAO and charged it with the establishment and policy for international aviation. In today's aviation world, in which airlines compete not only domestically, but globally, the standards set by ICAO are crucial to the fair and

efficient provision of international air transportation throughout the world. In the context of this proceeding, the members of the United States all-cargo industry routinely fly not only within the U.S., but across national borders and thus depend on a system in which aircraft intended for international use will be recognized and allowed entry by the various host countries. This is why the U.S. aviation industry as a whole, including the all-cargo carriers, have demonstrated global leadership in setting and achieving environmental sustainability objectives and will continue to do so, by participating in the FAA's program implementing ICAO's Carbon Off-Setting and Reduction Scheme for International Aviation, investing in the development of sustainable aviation fuels, and evaluating new technologies through the FAA's Continuous Lower Energy, Emissions and Noise (CLEEN) program.

It is against this backdrop that the Association supports the rule. However, we have identified some specific technical corrections to ensure uniformity with the ICAO standard, and also respectfully urge the agency to consider affording flexibility to enable the continued production of certain mid-size purpose built freighters for use wholly within the U.S., in light of the devastating impact of COVID-19.² Such action would be consistent with the ICAO standard and in concert with the EPA's obligations under the Clean Air Act to consider noise, safety, timing, and cost in developing these standards³.

² U.S. Department of Treasury, "Update on Treasury Implementation of the Payroll Support Program for the Aviation Industry" available at <https://home.treasury.gov/news/press-releases/sm1008> (May 12, 2020) (recognizing that over \$25 billion in grant funding had been awarded to 352 applicants, including all of the "major passenger carriers, more than 260 smaller passenger air carriers, and a significant number of cargo air carriers and contractors."); ICAO, "Effects of Novel Coronavirus on Civil Aviation: Economic Impact Analysis," available at <https://www.icao.int/sustainability/Documents/COVID-19/ICAO%20COVID%202020%2010%2008%20Economic%20Impact.pdf> (October 8, 2020) (recognizing that COVID-19 has resulted in a 13%-32% fall in global trade merchandise in 2020 compared to 2019 and expressing uncertainty about the global recovery).

³ 42 U.S.C. §§ 7571(a)(2)(B)(ii), (b).

II. THE EPA PROPOSAL; TECHNICAL CORRECTIONS TO ENSURE CONSISTENCY

It is clear from the preamble to the rule, the supporting cost benefit analysis, as well as technical standards document evaluating different stringencies and production timelines, that EPA, consistent with the ICAO standard, intends that “in-service” aircraft will not be covered by proposed rule. The ICAO standards make a clear distinction between “in-production” and “new type” aircraft and EPA extends this position to both the compliance date for changes to the type certificate made mid-production (the January 1, 2023 compliance date), before the airplane’s original airworthiness certificate is issued, as well as the production cut-off date of January 1, 2028. The “proposed rule recognizes differences between previously type certified airplanes that are in production and new type designs presented for original certification.”⁴ From the all-cargo carrier perspective, this distinction must be clear in the regulatory text. Our industry relies on the FAA certification process which allows in-service aircraft to be converted from passenger use to freighter use, or even from one type of freighter to another with additional capabilities for transporting freight. Under these scenarios, when changes are necessary to meet the demand for air cargo transport, the FAA may require the issuance of a supplemental type certificate that follows each aircraft. Thus, a single aircraft could carry multiple STCs that are transferred multiple times to different owners and leasing companies. It is essential the EPA rule be clear that “in-service” aircraft are not covered, and the January 1, 2023, date does not apply to aircraft that have already been issued an original airworthiness certificate, are in-service, and may subsequently undergo a modification requiring the issuance of an STC.

⁴ 85 Fed. Reg. at 51566

The industry and the FAA consider “new type” aircraft as aircraft that are the subject to an application for an original type certification while an “in-production” aircraft are aircraft that are subject to an existing, approved Type Certificate. During the period from January 1, 2023 to December 31, 2027, an in-production aircraft that meets the MTOM and is modified *before issuance of its first Certificate of Airworthiness* such that its ICAO CO₂ Metric Value increases by 1.5 percent or more must be certified to the applicable level as set forth in the proposed rule. All in-production aircraft for which a Certificate of Airworthiness is first issued on or after January 1, 2028, that meet the MTOM and other applicable criteria must be certified to the applicable in-production level. The critical element that ensures that the ICAO CO₂ standard will not apply to any aircraft that is already in-service is that the standard cannot and will not apply to an aircraft that has been issued an original Certificate of Airworthiness.

The Agency does incorporate this element with respect to in-production aircraft produced on or after January 1, 2028 – defining, per proposed Section 1030.1(a)(6) and (7), aircraft to which the regulation would be applicable as having a MTOM meeting the relevant threshold and “(ii) an original certificate of airworthiness issued on or after January 1, 2028” (emphasis added). Despite the clear and numerous references throughout the preamble regarding this applicability,⁵ EPA has not incorporated this crucial element into its proposed regulatory language with respect to in-production aircraft produced on or after January 1, 2023 and before January 1, 2028. We submit that changes are necessary to ensure the regulation does not inadvertently imply applicability to in-service aircraft.

⁵ See 85 Fed. Reg. at 51571 (“After January 1, 2023, and until January 1, 2028, an applicant that submits a modification to the type design of a non-GHG certificated airplane that increases the Metric Value of the airplane would be required to demonstrate compliance with the in-production rule. This proposed earlier applicability date for in-production airplanes, of January 1, 2023, is the same as that adopted by ICAO and is similarly designed to capture *modifications to the type design* of a non-GHG certificated airplanes *newly manufactured* prior to the January 1, 2028, production cut-off date.” (emphasis added)); see also ICAO Annex 16, Vol. 3, sec. 2.1.1(d) &(e) and Chapter 1 (definitions of “derived version of a non-CO₂-certified airplane” and “derived version of a CO₂-certified aeroplane”).

To ensure consistency, we respectfully request that the Agency amend proposed sections 1030.1(a)(4) and (a)(5) to reflect alignment with ICAO's intent and the preamble to the rule.⁶

III. CONSIDERATION OF THE IMPACT OF COVID-19 ON THE INDUSTRY

In developing the final rule, it is prudent and necessary for EPA to evaluate the devastating impact that COVID-19 has had on the U.S. and global aviation industry, the recovery from which is still very much uncertain, and afford sufficient flexibility in the final rule to allow for the continued production of certain mid-size, purpose built freighters for use in the U.S. domestic market. Such consideration would be consistent with the ICAO standard, as well as the allowances afforded to ICAO member states in ICAO Annex 15 and comply with the requirements of the Clean Air Act.

While the most immediate and severe impact of COVID-19 has been on commercial passenger service, U.S. domestic air cargo carriers have been affected, as evidenced by over \$650 million afforded in federal assistance. Further, the impact on various aircraft manufacturers, including Airbus and Boeing, has been unprecedented and we anticipate that this may cause a delay in their ability to design, test, and certify compliant new aircraft designs, as well as modify production lines and train employees.⁷ Prioritization of the design of new aircraft will likely be afforded to large, passenger aircraft intended for use in international operations, leaving a gap in the availability of new, mid-size, purpose built freighters. This is primarily

⁶ We understand a regulatory scheme will be provided in the comments submitted by Airlines for America (A4A) and we support that approach.

⁷ See Airbus "Airbus Plans to Further Adapt to COVID-19 Environment", available at <https://www.airbus.com/newsroom/press-releases/en/2020/06/airbus-plans-to-further-adapt-to-covid19-environment.html> (June 30, 2020) (reporting involuntary workforce reductions as a result a 40% drop in commercial aircraft business activity); see also Boeing, "Boeing Forecasts Challenging Near-Term Aerospace Market With Resilience in Long-Term" available at <https://boeing.mediaroom.com/2020-10-06-Boeing-Forecasts-Challenging-Near-Term-Aerospace-Market-with-Resilience-in-Long-Term> (October 6, 2020) (adjusting its market outlook over the next decade to account for the impact of COVID-19 on demand).

because of the smaller market and demand for mid-size, purpose-built freighters. Considering the much shorter operating frequency of these freighter aircraft as reflected in EPA's own simulation analyses supporting the rule, and the de minimis impact on emissions that the operation of these aircraft would have, it would be appropriate for EPA to consider affording flexibility to allow for the continued production of these aircraft beyond January 1, 2028, to ensure a sufficient amount of new aircraft are available to support the U.S. domestic aviation industry. Such action is warranted when considering the cost and timing of compliance, as required under the Clean Air Act.

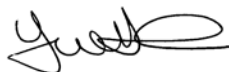
CONCLUSION

The Cargo Airline Association supports an EPA rulemaking and its position to move forward to harmonize with ICAO GHG emissions standards, with the modifications noted above. We respectfully urge the agency to make changes to the regulatory text to ensure consistency and uniformity with the ICAO standards. Moreover, to the extent not inconsistent with the positions set forth herein, the Cargo Airline Association also supports and endorses the Comments filed in this proceeding by our member airlines, as well as Airlines for America (A4A), and the Aerospace Industries Association (AIA).

Respectfully submitted,



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