



Airlines for America®
We Connect the World

April 25, 2022

Submitted electronically at:

<https://aq.ecology.commentinput.com/?id=DpgZ3>

Ms. Rachel Assink
Rulemaking Lead
Washington Department of Ecology
Air Quality Program | Policy and Planning Section
P.O. Box 47600
Olympia, WA 98504-7600

Re: Additional Airlines for America® Comments on the Clean Fuels Program Rulemaking

Dear Ms. Assink:

Airlines for America® (A4A), the trade association for the leading U.S. passenger and cargo airlines,¹ appreciates the opportunity to provide this feedback on the Washington Department of Ecology's (Ecology) Clean Fuels Program (CFP) rulemaking and the presentations made by Ecology staff and the department's consultants at the most recent Stakeholder Meeting, which took place on April 13, 2022.² This letter reiterates and supplements the comments we provided in our letter dated January 24, 2022.³

In our previous letter, we explained the U.S. airline industry's strong climate change record and how A4A and our member carriers have been and remain deeply committed to addressing climate change and the development of a commercially viable sustainable aviation fuel (SAF, or as Ecology refers to it in the draft CFP rule, alternative jet fuel (AJF)) industry in Washington, the broader Pacific Northwest region, and throughout the country and world. We detailed our pledges in 2021 to work across the aviation industry and with government leaders in a positive partnership to achieve net-zero carbon emissions by 2050, and to work with policymakers and other stakeholders to enable the availability (to U.S. aircraft operators) of 3 billion gallons of cost-competitive SAF in 2030. Tremendous quantities of SAF, we made clear, must be produced and deployed for the aviation industry to reach its ambitious climate goals and the less carbon-intensive, more environmentally sustainable future towards which it is diligently working.

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://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-424-455>.

³ Our earlier comment letter is posted at https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid100/did1008/pid_202037/assets/merged/ow0ki9t_document.pdf?v=6VWSDYNJ5.

We note that the latest version of the draft rule language remains unchanged in key respects from the November 16, 2021, version on which we previously commented.⁴ We appreciate that Ecology staff have stated on a number of occasions that final decisions have not yet been made on the precise regulatory language Ecology intends to formally propose this summer, and again ask Ecology to incorporate our proposed changes in the formal proposal. In particular, we reemphasize that in view of the clear statutory direction that is codified in RCW 70A.535.040(1)(b), fuels used for the propulsion of aircraft must be exempt from the CFP.⁵ This exemption, which the Washington State Legislature readopted in section 411 of chapter 182 of the Laws of 2022,⁶ is broad and encompasses not only conventional jet fuel and aviation gasoline but also AJF. A4A therefore urges Ecology to formally propose regulatory language that comports with rather than contradicts this clear statutory direction. Instead of listing AJF (in draft WAC 173-424-130(2)(k)) as a fuel subject to the CFP – in contravention of RCW 70A.535.040(1)(b) – and also listing AJF (in draft WAC-173-424-130(3)(b)(v)) as a voluntary opt-in fuel, Ecology must list AJF, along with conventional jet fuel and aviation gasoline, as an exempt fuel in draft WAC 173-424-140(1)(a). In addition to this broad programmatic exemption for all aircraft fuels, to comply with the Legislature’s express direction Ecology must include a regulatory provision akin to RCW 70A.535.030(5), i.e., a provision stating that although AJF is an exempt fuel, AJF producers may generate credits under the CFP.⁷

Moreover, A4A strongly disagrees with the International Council on Clean Transportation’s recommendation that Ecology “[i]nclude [a] fossil jet fuel CI [carbon intensity] as a benchmark for alternative aviation fuels on an opt-in basis.”⁸ As we explained in our January 24, 2022, comment letter, the Washington State Legislature has provided Ecology with clear, unequivocal direction in this area as well. RCW 70A.535.020(1), which the Legislature readopted in section 408 of chapter 182 of the Laws of 2022, provides as follows:

The department shall adopt rules that establish standards that reduce carbon intensity in transportation fuels used in Washington. The standards established by the rules must be based on the carbon intensity of gasoline and gasoline

⁴ See <https://ecology.wa.gov/DOE/files/e4/e4b11436-8669-485d-8939-05f5524bf0ff.pdf>.

⁵ See <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.535.040>.

⁶ See <https://lawfilesexternal.leg.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5974-S.SL.pdf#page=1>.

⁷ RCW 70A.535.030(5), which the Legislature also readopted in section 410 of chapter 182 of the Laws of 2022, *id.*, directs Ecology to include in the CFP rule mechanisms that will allow entities “to elect to participate in the clean fuels program by earning credits for the production, import, distribution, use, or retail of” SAF/AJF with lifecycle greenhouse gas emissions “lower than the per-unit standard established in RCW 70A.535.020.” See <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.535.030>.

⁸ See April 13, 2022, Presentation (available at <https://ecology.wa.gov/DOE/files/92/92f2c056-6b35-4538-8f65-00c68b224f82.pdf>), at slides 31 & 46.

substitutes and the carbon intensity of diesel and diesel
substitutes.⁹

Similarly, as previously noted, RCW 70A.535.030(5) stipulates that parties must be allowed to “earn[] credits for the production, import, distribution, use, or retail of” AJF or any other exempt fuel “with associated life-cycle greenhouse emissions lower than the per-unit standard established in RCW 70A.535.020.” As detailed above, RCW 70A.535.020 only calls for two CI benchmarks – one for gasoline and gasoline substitutes and another for diesel and diesel substitutes. It neither directs nor authorizes Ecology to establish an entirely different CI benchmark (e.g., based on the CI of conventional jet fuel) against which to measure AJF for credit generation purposes. Again, A4A maintains this is entirely logical, as measuring AJF against the CI benchmark for diesel, which the California Air Resources Board effectively will do starting in 2023 (when the separate benchmarks under the California Low Carbon Fuel Standard (LCFS) regulation for diesel fuel and conventional jet fuel substitutes will converge),¹⁰ would ensure from the outset of the CFP a level playing field between AJF and renewable diesel.¹¹ As we previously explained, under both the California LCFS and Oregon Clean Fuels Programs, AJF has been disadvantaged versus renewable diesel from a credit generation standpoint since 2019 due to the higher CI benchmarks in those states for diesel fuel versus conventional jet fuel substitutes/AJF.¹²

AJF and renewable diesel, in fact, often are coproduced in the same facility using the same feedstock (albeit with renewable diesel produced in a much higher ratio), and having the same CI benchmark would help promote AJF production, which in turn would stimulate additional renewable diesel production given the fuels’ coproduction.¹³ Other market factors – for example, the higher spot price that diesel fuel generally commands compared to conventional jet fuel and the rigorous jet fuel specifications that make producing jet fuels a “higher technical hurdle” than producing on-road fuels – already encourage renewable diesel production over AJF. There

⁹ RCW 70A.535.020(1) (emphasis added), available at <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.535.020>.

¹⁰ See 17 CCR 95484(c)-(d), available at [https://govt.westlaw.com/calregs/Document/I88413CAE13FD4ADB86012CCE34231DE3?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I88413CAE13FD4ADB86012CCE34231DE3?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).

¹¹ Likewise, the Oregon Department of Environmental Quality effectively will start measuring AJF for credit generation purposes under the Oregon Clean Fuels Program against that Program’s CI benchmark for diesel fuel starting in 2024. See OAR 340-253-8010, Tables 2-3, available at <https://secure.sos.state.or.us/oard/viewAttachment.action?ruleVrsnRsn=277343>.

¹² Assuming the same CI for renewable diesel and AJF, as is the case under the California LCFS for World Energy’s coproduced fuels (see, e.g., https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0268_summary.pdf and https://ww2.arb.ca.gov/sites/default/files/classic/fuels/lcfs/fuelpathways/comments/tier2/b0168_summary.pdf), the higher benchmark for diesel versus conventional jet fuel substitutes necessarily means renewable diesel earns more credit than AJF.

¹³ See National Renewable Energy Laboratory, “Effect of Additional Incentives for Aviation Biofuels: Results from the Biomass Scenario Model,” available at https://ww3.arb.ca.gov/fuels/lcfs/lcfs_meetings/031717nrel_presentation.pdf.

simply is no need for Ecology to tip the scales in favor of renewable diesel production even further by according it greater credit than AJF, especially given that California and Oregon are poised to cease doing this.

With respect to co-processing, although the draft rule language still does not set out any definitions, A4A expresses its support for subsection (7) of draft WAC 173-424-OIC Obtaining a Carbon Intensity, which describes the process for obtaining a carbon intensity for fuel produced through “co-processing at a petroleum refinery” (e.g., co-processed jet fuel). As we pointed out in our earlier comment letter, the ASTM International specification for conventional jet fuel, ASTM D1655 (“Standard Specification for Aviation Turbine Fuels”), allows certain feedstocks (at present, lipids and Fischer-Tropsch hydrocarbons) to be co-processed with petroleum jet fuel,¹⁴ and we strongly support Ecology, as is the case under the California LCFS and Oregon Clean Fuels Programs, enabling credit generation under the CFP for fuel produced through the current (or any future) ASTM-approved co-processing pathways. Consistency across the three west coast states would avoid market distortions that inconsistency could produce.

Finally, with respect to draft WAC 173-424-CI Carbon Intensities, A4A observes that unless subsection (4) applies, an AJF producer would have to submit a Tier 2 pathway application to establish a CI for its fuel. We are troubled, though, by the indication that Ecology would not accept Tier 2 pathway applications until July 1, 2025, because this could have the effect of delaying the deployment of AJF in Washington. Again, the availability of cost-competitive AJF is an imperative for the aviation sector to decarbonize and ramping up production of AJF needs to be a priority. Accordingly, A4A requests that Ecology reconsider this provision.

* * *

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

Sincerely,



Ira Dassa
Director, Environmental Affairs
idassa@airlines.org

¹⁴ See ASTM D1655-19, Annex A1, subsection A1.2.2, available from ASTM International (<https://www.astm.org/>).