AIR TRANSPORT ASSOCIATION

December 10, 2010

Process Support
Rulemaking Directorate
European Aviation Safety Agency (EASA)
Postfach 10 12 53
D-50452 Cologne
Germany

Re: Notice of Proposed Amendment (NPA) No. 2010-10

Dear Sir or Madam:

The Air Transport Association of America, Inc. ("ATA") submits these comments in response to Notice of Proposed Amendment No. 2010-10 (the "NPA"), in which the European Aviation Safety Agency ("EASA") has published proposed recommendations to amend Regulation (EC) No. 2042/2003, applicable to European Union (EU) aircraft operators.

The ATA is the principal trade and service organization of the U.S. scheduled airline industry, and our members[1] account for 90 percent of the passenger and cargo traffic carried annually by U.S. scheduled airlines. ATA member airlines currently operate a fleet of 4,083 large commercial transport airplanes. Several members engage in code sharing and leasing arrangements with EU aircraft operators, and may plan to further engage in such commercial arrangements in the future. If adopted, the recommended amendments of the NPA would affect the viability of existing and future code-share and leasing agreements between EU and ATA-member airlines. Accordingly, ATA has a unique interest in the development of the recommended amendments.

Key Provisions of the Recommended Amendment.

The NPA would extend EU regulatory requirements to aircraft operated by third-country airlines if such aircraft are leased by an EU airline or used for flights on which an EU airline assigns its designator code. The requirements generally are in the areas of continuing airworthiness and aircraft maintenance. See Notice, ¶ 34 (2). Before leasing an aircraft from a third-country airline or placing its code on a flight of a third-country airline, an EU airline would have to "demonstrate to its competent authority" that the aircraft meets enumerated ICAO-related standards and satisfies a multitude of additional EASA requirements. See Proposed Regulation T.A.210.

---

[1] ATA is the principal trade and service organization of the U.S. scheduled airline industry. ATA airline members are: ABX Air, Inc.; AirTran Airways, Inc; Alaska Airlines, Inc.; American Airlines, Inc.; ASTAR Air Cargo, Inc.; Atlas Air, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; Evergreen International Airlines, Inc.; Federal Express Corporation; Hawaiian Airlines Inc.; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines, Inc.; UPS Airlines; and US Airways, Inc.
ATA Airline Associate Members are: Air Canada; Air Jamaica, Ltd.; and Mexicana.

Effect and Potential Impact of the Amendment.

The NPA would require an EU aircraft operator to obtain from its third-country partner and provide to the EU competent authority a substantial amount of documentation already provided by the third-country airline operator to its own regulator (in the case of ATA members, the FAA), in order to satisfy the regulator that the third-country operator meets ICAO standards. Compliance with this requirement would be extremely burdensome. However, the NPA would go much further by requiring the EU operator to satisfy the EU competent authority that the third-country aircraft operator meets numerous EASA-imposed requirements. Those requirements well could be inconsistent with requirements of the third-country regulator – the body with safety oversight responsibility under the Chicago Convention – and even if not inconsistent would impose significant additional burdens.

The proposed requirements would burden leasing and code sharing with third-country airlines to the extent that EU aircraft operators likely would find these arrangements economically impractical and their benefits unavailable. EU operators may no longer have the option to supplement their existing services with different aircraft types or additional aircraft in situations where it would be economical for them to acquire and operate such aircraft in small numbers. The requirements would diminish the ability of EU operators to economically and efficiently test new markets and services and their flexibility to increase capacity in response to short-term demands.

International Law Considerations

This proposal creates the potential for serious adverse implications to well-recognized international law principles, including those specifically applicable to EU-U.S. civil aviation relations. For those reasons, the proposal should not go forward. Our concerns are briefly described below.

EU-U.S. Open Skies Agreement.

The open skies agreement was painstakingly negotiated in two stages over several years. It has vastly increased competition in transatlantic markets. As European Commission Vice-President Siim Kallas said earlier this year, the agreement has introduced "new commercial freedoms for operators and an unprecedented framework for regulatory cooperation in the field of transatlantic aviation." MEMO/10/74, March 3, 2010. More particularly with respect to the Notice of Proposed Amendment, the agreement opened up opportunities for EU and U.S. air carriers to code-share and wet lease aircraft; this was one of the important purposes of the agreement. By hampering code-share and wet-lease operations, the NPA could frustrate the freedom of air service that was the objective of those arduous negotiations.

Indeed, the agreement was structured to avoid precisely such an outcome. Article 8, § 1 of it states:

> "The responsible authorities of the Parties shall recognize as valid, for the purposes of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by each other and still in force…."

The EU and U.S. negotiators underscored that commitment when they jointly declared that:

> "Both delegations expressed their expectation that their respective aeronautical authorities would permit operations consistent with the terms of the agreement…." EU-U.S. Memorandum of Consultations of March 25, 2010, p. 3, ¶ 28.

The additional airworthiness and maintenance regulatory requirements that the NPA would impose clearly diverge from the core concepts of reciprocity that the EU and U.S. representatives envisioned in negotiations that were concluded less than nine months ago.

Chicago Convention.

More broadly, the NPA departs from the framework for mutual recognition that the Chicago Convention of 1944 established. Article 33 of the Convention states that "[c]ertificates of airworthiness and certificates of competency and licenses issued or rendered valid by the contracting State in which the aircraft is registered, shall be recognized as valid by the other Contracting States, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to this Convention." The NPA, however, would impose regulatory requirements that go beyond those of the state of registry of the aircraft, an imposition that it clearly acknowledges. NPA ¶ 39.

Consequently, the proposal seems not to adhere to that longstanding principle of the Chicago Convention. That would troubling enough itself; it is all the more so in the context of the EU-U.S. open skies system.

In view of the potential effect and impact of the recommended amendment, which has no apparent safety benefit and appears to contradict the EU-U.S. Open Skies Agreement, we recommend that the Agency withdraw and reconsider the NPA.

We sincerely appreciate the opportunity to comment on the Notice of Proposed Amendment, and would appreciate the Agency's consideration of these views.

Sincerely,

Joseph W. White

Managing Director, Engineering & Maintenance
Air Transport Association of America
1301 Pennsylvania Avenue, NW, Suite 1100
Washington, DC 20004

202-626-4000