



March 30, 2007

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SUBMITTED VIA EMAIL TO: [jake.plante@faa.gov](mailto:jake.plante@faa.gov)

**RE: Federal Presumed to Conform Actions Under General Conformity (72 Fed. Reg. 6641 (Feb. 12, 2007))**

Dear Dr. Plante:

Thank you for the opportunity to provide comments on the Federal Aviation Administration's proposed categories of Federal actions presumed to conform to an applicable State Implementation Plan. The Air Carrier Association of America (ACAA), the Air Transport Association (ATA), the Airport Consultants Council (ACC), and Airports Council International – North America (ACI-NA) submit the following comments for your consideration.

**A. Description of Commenters**

ACAA: The Air Carrier Association of America represents smaller low fare carriers including AirTran Airways, Frontier Airlines, Spirit Airlines, and MN Airlines (dba Sun Country Airlines). ACAA also has associate members.

ATA: As the principal trade and service organization of the major scheduled air carriers in the United States, ATA regularly comments on federal and state regulatory developments that may affect the airline industry. ATA airline members transport more than 90 percent of all U.S. airline passenger and cargo traffic. **ATA Airline Members:** ABX Air, Inc., Alaska Airlines, Inc., Aloha Airlines, American Airlines, Inc., ASTAR Air Cargo, Inc., Atlas Air, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Evergreen International Airlines, Inc., FedEx Corporation, Hawaiian Airlines, JetBlue Airways Corp., Midwest Airlines, Inc., Northwest

Airlines, Inc., Southwest Airlines Co., United Airlines, Inc., UPS Airlines, US Airways, Inc.; **ATA Airline Associate Members:** Air Canada, Air Jamaica Ltd., Mexicana.<sup>1</sup>

ACC: Founded in 1978, the Airport Consultants Council is the international trade association that represents consulting firms and related businesses involved in the development and operations of airports and related facilities.

ACI-NA: First established as the Airport Operators Council in 1947, today's Airports Council International - North America (ACI-NA) represents local, regional and state governing bodies that own and operate commercial airports throughout the United States and Canada. ACI-NA member airports serve more than 95 percent of the U.S. domestic scheduled air passenger and cargo traffic, and virtually all U.S. scheduled international air travel.

## **B. Introduction**

FAA's draft notice, *Federal Presumed to Conform Actions Under General Conformity*, proposes fifteen categories of airport projects FAA aims to classify as presumed to conform to an applicable State Implementation Plan. Through developing this presumed to conform list, FAA has identified that the actions are below de minimis or regional significance levels over the history of the application of the General Conformity regulations. Creation of the list also eliminates agency costs associated with evaluating actions with few, if any, emissions. The commenters have requested such a listing from FAA for some time, and are appreciative of the effort expended to analyze and create such a list which will certainly reduce the burden on the commenters as well. However, the specific listing of certain actions in the draft notice may have the effect of creating more, not less, agency involvement with projects that have little or no air emissions, and require detailed analysis of actions that are already exempt by the General Conformity regulations. Specific issues within the proposed presumed to conform list are presented below.

## **C. Specific Comments on Draft Presumed to Conform Actions**

### **1. Existing Exemptions**

#### **a. *Routine Maintenance and Repair Activities***

The General Conformity regulations include an exemption for Routine Maintenance and Repair Activities, including repair and maintenance of administrative sites, roads, trails, and facilities.<sup>2</sup> No additional clarification on what is considered routine maintenance and repair was considered necessary by EPA in the preamble to the final rule.<sup>3</sup> The current draft notice, however, includes language that appears to unduly limit the scope of the regulatory exemption. Specifically, the draft notice states that “[a]irport maintenance, repair, removal, replacement, and installation work that matches the characteristics, size, and function of a facility as it existed

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<sup>1</sup> Consistent with discussions with FAA, ATA will submit supplemental comments on a limited number of topics no later than April 5, 2007.

<sup>2</sup> 40 CFR 93.153(c)(2)(iv)

<sup>3</sup> 58 FR 63214, November 30, 1993

before the work occurred” qualifies for the exemption.<sup>4</sup> This language, to the extent it is meant to clarify that activities that fall into this category qualify for the exemption is not problematic. The draft notice goes on to observe that “[s]uch activity does not increase the capacity of the airport or change the operational environment of the airport.”<sup>5</sup> Again, to the extent this language is meant to characterize a subset of activities that qualify for the exemption, it is not problematic.

However, the language appears to imply that only activities that do not increase airport capacity at all or change operational characteristics of an airport may qualify for the exemption. This is problematic for several reasons. The question of whether a routine maintenance/repair project results in increased airport capacity is not always easily answered. In fact, the application of this limitation could effectively remove a number of projects FAA proposes to actually include on the Presumed to Conform list because they are considered “routine” maintenance. For example, airport pavement markings projects can result in reduced delays, and installation of navigational aids can improve efficiency. Other projects such as non-runway pavement work and commercial vehicle staging areas could also be affected. If this language is interpreted as a limitation on the scope of the exemption, these projects would now require a conformity applicability analysis, even if capacity is only increased by a single passenger or delay reduced for one aircraft. Accordingly, FAA should clarify that routine activities intended to be covered by the exemption may qualify for the exemption if their effect on airport capacity is incidental or they do not fundamentally alter the operational characteristics of an airport.

b. *Land Transfers*

As FAA explains, the current regulations include an exemption for land transfers when those transfers have 'no reasonable expectation of a change in land use'. Airport sponsors (and Federal agencies) acquire property for a number of reasons, including protection of airspace or zoning, or enactment of a new program or construction project. However, the simple transfer of land to an airport authority should not alone constitute an action requiring a conformity determination. Only the actual project entailing the change in land use should be considered when determining if a conformity analysis is necessary.

2. Presumed to Conform Project Descriptions and Justifications

a. *New Limitations on Pavement Markings, Terminal Upgrades, Commercial Vehicle Staging Areas, Etc.*

Under FAA’s proposal, many actions that were previously considered routine maintenance, and thus exempt from conformity analyses, are now subject to limitations which could eliminate that exemption for some actions. Examples include the new gallon limitations for pavement marking projects and size limitations for commercial vehicle staging areas and new non-runway airfield paving. We discourage the inclusion of these additional restrictions which, in effect, create the need for additional analyses. At a minimum, FAA should clarify that such limitations used to determine Presumed to Conform status do not apply to projects previously considered exempt as routine maintenance and repair activities, and are not intended to affect the scope of that exemption.

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<sup>4</sup> 72 FR 6643, Section II(2)

<sup>5</sup> Id.

b. *Terminal/Concourse Improvements*

The draft notice correctly observes that terminal/concourse improvements are typically undertaken to improve passenger convenience by increasing the space of certain terminal areas and increasing terminal size in and of itself do not have the effect of inducing demand or increasing airport capacity.<sup>6</sup> FAA properly limits relevant emissions from such projects to those from construction vehicles and equipment. FAA should also explicitly recognize that terminal building expansions undertaken in the airport administration/ operations area rather than the passenger area are thus similarly included in this category.

Table III-1 intends to indicate the square footage of terminal space increases above which a conformity determination must be made. The label in Table III-1 should be clarified to state that that the sizes listed are for the net increase in terminal area, not the total terminal area after the improvements.

c. *New HVAC Systems, Upgrades, and Expansions*

The draft notice discusses limits on new, upgraded or expanded HVAC projects that result in presumed to conform emission levels. Based on our understanding, these projects would not need to be included on the Presumed to Conform list. A stationary source project, such as a new or expanded HVAC plant, will require this calculation anyway to determine if it will be subject to New Source Review (NSR) permitting. Because the NSR thresholds and General Conformity de minimis thresholds are the same for non-attainment pollutants, any facility that embarks on an HVAC project will be exempt from General Conformity determinations because the project is either below de minimis levels or the project is subject to NSR permitting.

In cases where HVAC projects are included with larger airport development programs, the inclusion of HVAC on the presumed to conform list only means that the airport authority has to determine if the HVAC portion will be the piece that they separate as not needing further analysis, or if some other presumed to conform piece will be separated from the General Conformity applicability evaluation. Eliminating new, upgraded, or expanded HVAC projects from the list because these projects should always be exempt regardless of size would actually provide more flexibility to the airport authority in deciding which presumed to conform project in their development program should be excluded from the applicability analysis and potential general conformity determination.

Similarly, any stationary source subject to a minor source permit should be presumed to conform. An existing exemption applies to any stationary source emissions subject to NSR. Because EPA's criteria requires that at a state's minor source permitting program only covers projects with less impact than those subject to NSR permitting, projects subject to a minor source permit should also be included.

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<sup>6</sup> 72 FR 6648, Section III.6.

d. *Airport Security*

A concern with the draft notice in the discussion of airport security is that it implies that one-to-one parking replacement projects that move close-in parking to remote lots are presumed to conform only if they are part of an airport security project [72 FR 6653, III.8]. We believe any project that moves close-in parking to remote lots should be presumed to conform or exempt under routine maintenance because the benefit of relocating parking away from terminal buildings typically reduces vehicle miles traveled on airport property regardless of the purpose of the project.

e. *Airport Safety*

FAA states that “RSA improvements are presumed to conform unless a new road or the relocation of a road is required.” As written, the need to relocate an airfield patrol road, which would have negligible emissions, as part of a runway safety area improvement could trigger a general conformity determination. We recommend modifying this section to read “RSA improvements are presumed to conform unless a new public road or the relocation of a public road is required.”

f. *Emission Calculation Methodology*

The emission factors used to calculate emissions for construction equipment and other non-road engine emissions included in the draft notice are based primarily on EPA’s 1991 Nonroad Engine and Vehicle Emissions Study – Report. This report was published over 15 years ago, and the construction equipment emission factors were obtained from reports dated from 1973 to 1988. In addition, median life, annual activity, and load factors were obtained from EPA’s 1997 Median Life, Annual Activity, and Load Factor Values for Nonroad Engine Emissions Modeling.

Since then EPA has promulgated a number of emission standards that impact emissions from nonroad engines, including construction equipment. Because the emission calculations being conducted are for general conformity purposes, these calculations should be held to the same standards required by the general conformity regulations.

Specifically, 40 CFR 93.159(b) requires that analyses conducted under Subpart B “must be based on the latest and most accurate emission estimation techniques available...” The NONROAD2005 Emissions Inventory Model, which EPA finalized over a year ago, appears to be the latest and most accurate model available at this time. Because the presumed to conform demonstration calculations will be applied to projects developed no earlier than 2007, the calculations should be revised to incorporate the updated emission factors, median life, annual activity, and load factors available in NONROAD2005 Model.

g. *Additional Actions for Inclusion*

We note that FAA compared the list of categorical exclusions under FAA Order 5050.4B as a source of actions for this Presumed to Conform list. Undertaking a similar analysis, we developed the following list of actions that FAA may consider adding to the proposed list either because it was unclear if they are included in the proposed list or they clearly were not included.

A caveat may be necessary for those projects that include major construction. This list is not intended to be exhaustive, and we respectfully reserve the right to request that FAA consider the addition of other appropriate activities to the Presumed to Conform list in the future.

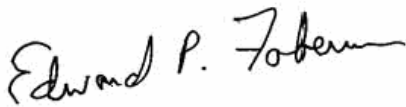
- Airfield barriers.
- Airfield improvements, runways (extend, fillet, groove, rebuild, resurface, strengthen).
- Cargo building.
- Heliport at an existing airport.
- Fill activity.
- Non-radar facilities.
- On-airport obstruction treatment.
- Replacement structures.
- Runway threshold.
- Utility line construction, temporary.
- Wildlife Hazard Management Plan implementation.

#### **D. Conclusion**

The below signed organizations appreciate FAA's development of the Presumed to Conform list. While inclusion of many of these projects will be beneficial to the industry in streamlining the applicable environmental processes, the limitations placed on many of the project categories in the proposed list could be read as effectually eliminating the exemptions already in existence for projects already deemed to conform. Because these limitations counteract the streamlining intent without effectuating an environmental benefit, FAA should reconsider their inclusion.

Thank you for consideration of these comments. Please contact Jessica Steinhilber at 202-861-8092 or [jsteinhilber@aci-na.aero](mailto:jsteinhilber@aci-na.aero) with any questions.

Sincerely,



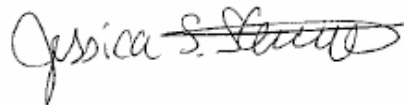
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