

Comments and Responses to FAA Presumed to Conform Draft Federal Register Notice

July 2007

The Federal Aviation Administration (FAA) received seven public letters in response to the FAA Presumed to Conform (PTC) Draft Federal Register Notice of February 12, 2007 (Vol. 72, No. 28, pp. 6641-6656). The letters and associated comments below are listed in the order that they were received by APP-400 between the dates of March 27 and April 9, 2007.

The comments are numbered using an integer-decimal format. The integer identifies the commenter and affiliation and the decimal number identifies the specific comment or concern that is being addressed by the FAA in response. Comments are presented in italic to indicate that the comment is a direct quote from the commenter.

1. Larry Greene, Executive Director, Sacramento Metropolitan Air Quality Management District (SMAQMD)

Comment 1.1 - PTC Item #4: Aircraft Gate Areas on Airside

...it is important to identify if the analysis included upgrades such as airside gate electrification as part of this category. Projects incorporating gate electrification, and shown to be de minimus, could be a catalyst for airport agencies and airlines to pursue upgrades in this area. (Page 1)

Response 1.1

The FAA agrees that gate electrification (e.g., for aircraft preconditioned air and power) is an activity that would qualify under this PTC item because it increases the efficiency of airside ground and passenger services in the gate area. Gate electrification has been shown to be one of most effective strategies for reducing airport emissions by reducing the use of ground support equipment (GSE) and aircraft auxiliary power units (APUs). For purposes of clarification, the FAA has revised this category of presumed to conform actions to add gate electrification as an example. It is worth noting that gate electrification projects are also included under another category of presumed to conform actions: Low-Emission Technology and Alternative Fuel Vehicles.

Comment 1.2 - Documentation

... to provide further clarification and better understanding of the project analyses performed, references to the results of the analyses should be provided. (Page 1)

Response 1.2

A general reference to the availability of project data and analysis has been added to the introductory “Summary” under the subheading: *Notification Process for Presumed to Conform*. As stated in the Summary, the individual and office listed under “For Further Information Contact” in the Final Notice for Federal Presumed to Conform Actions Under General Conformity published in the Federal Register in June 2007 may be contacted to review project documentation, including airport survey methodology and forms, survey results from approximately 112 airports catalogued in a “Volume I: Surveys Report”, and spreadsheet files containing equipment type descriptions, operating levels, emission factors, emission calculations, etc. for PTC items containing numerical tables.

Comment 1.3: How to Apply

...we urge inclusion of requirements for minimum level of controls to be presumed to conform in areas with non-attainment classifications of serious or higher. Similar conditions should be considered to minimize ‘greenhouse gas’ emissions. (Page 1)

Response 1.3

Emissions resulting from Federal actions, including PTC actions, are regulated under General Conformity by means of *de minimis* thresholds, which correlate to U.S. Environmental Protection Agency (EPA) area designations and classifications. For example, project emissions in a “moderate” nonattainment area for ozone cannot equal or exceed 100 tons of VOCs or NO_x to remain *de minimis*. In a “severe” nonattainment area, project emissions may not equal or exceed 25 tons, respectively. By design, the scaled *de minimis* thresholds provide a form of control over the size of projects and emissions. In other words, the worse the area classification, the fewer project emissions allowed. For example, in Table III-1, Presumed to Conform Limits for Selected Projects, the FAA sets numerical limits on the volume of paint for pavement markings and the size of terminal upgrades, commercial vehicle staging areas, and new airfield work (non-runway). The worse the area classification, the less activity (gallons or square footage) allowed for the above projects that qualify as presumed to conform. Additional safeguards exist under 40 CFR 93.153(j) and NEPA. Section 93.153(j) provides that actions otherwise presumed to conform that do not “in fact” conform with the purpose of the State

Implementation Plan “shall not be presumed to conform and the requirements [under Part 93] shall apply...” The FAA has independent requirements under NEPA to analyze potential air quality impacts and determine whether proposed actions will threaten to violate the National Ambient Air Quality Standards (NAAQS). FAA procedures in this area are described in the FAA Air Quality Procedures for Civilian Airports and Air Force Bases, September 2004, FAA-AEE-04-03).

With regard to greenhouse gases, the Rule regulates the six “criteria pollutants” and does not set specific standards for greenhouse gases (e.g., CO₂) and other pollutants. There are many uncertainties and gaps regarding climate impacts of aviation. The FAA is engaged in the international discussion of these issues and how more research and development can provide needed data and better assessment methodologies. Accordingly, the FAA and the Canadian government assembled a workshop of 30 international science experts to formulate a research plan in this area. The outcome of the workshop can be reviewed at <http://web.mit.edu/aeroastro/partner/reports/caep7/caep7-ip026-climatewrkshp.pdf>.

2. Sheila Holman, Section Chief, North Carolina Department of Environment and Natural Resources (NCDENR) Division of Air Quality

Comment 2.1 - Methodology

NCDAQ is concerned that setting applicability limits for General Conformity on a ton per year basis rather than a ton per day basis may not be sufficiently protective of the National Ambient Air Quality Standards although this approach is the result of the way the Environmental Protection Agency (EPA) wrote their General Conformity rule. The FAA thresholds are simply following the EPA's approach.

The 1990 Clean Air Act set pollutant thresholds that define major sources in nonattainment and maintenance areas' that have been carried into the General Conformity regulation (40 CFR §93.153(b)(1) and 40 CFR § 93.153(b)(2)). When these thresholds are applied to typical industrial sources, it is reasonable to expect that day to day emissions will be approximately equal each operating day. So, if the threshold is divided by 260 (5 days a week) and 365 (7 days a week) the probable range of daily emissions from industrial sources at the threshold limit is found. It is possible that Federal actions could cause emissions that are under annual thresholds but, on a daily basis, are much in excess of a typical threshold level for an industrial source. A short term but intense construction or maintenance project with total emissions below the proposed annual thresholds could very well have average daily emissions that would extrapolate to 200 or 300 tons per year. If high emissions occur on a day when conditions are favorable for high ambient pollutant concentrations, these emissions could make a significant contribution to an ambient air exceedance and could exceed airport emissions anticipated in the State Implementation Plan (SIP). (Page 1)

Response 2.1

As noted in the comment, general conformity *de minimis* thresholds are annual rates expressed in “tons per year” for each criteria pollutant. This methodology works well for aviation because most airports operate at consistent levels over the year. In addition, most airport emissions are generated by mobile sources (e.g., cars, shuttle buses, and GSE), which are a more constant source than many industrial processes. Under general conformity, construction emissions are considered direct emissions and are analyzed and reported in calculating total direct and indirect emissions. To assure that general conformity takes into account emissions caused by short term but intense construction or maintenance activities, Federal agencies must consider the year during which projected emissions are highest in determining applicability [40 CFR §93.159(d)(2), EPA/FAA General Conformity Guidance for Airports: Questions and Answers, September 25, 2002]. The FAA was able to rely upon its past experience in projecting emissions and determining applicability of general conformity to actions involving construction and maintenance activities to identify those that

could be presumed to conform. While airport emissions may rise temporarily due to short-term construction emissions, it is important to note that annualized *de minimis* thresholds are quite conservative and that construction emissions from the categories of actions presumed to conform, based on our modeling and assessment experience, would be highly unlikely to cause a violation of the NAAQS.

Comment 2.2 - How to Apply [Notification]

NCDAQ is concerned that there will be loss of State oversight of the General Conformity determination of applicability process.

Currently, FAA must submit documentation to the State, because of North Carolina's General Conformity regulation, showing the level of expected emissions, direct and indirect, arising from planned Federal actions in nonattainment and maintenance areas. These emissions include those during any construction activities as well as changes in emissions from usage of the facility after the action. When NCDAQ agrees that the direct and indirect emissions are shown to fall below the applicable tons per year threshold, FAA is free to proceed with the action. If the emissions are above the thresholds, the FAA must make a showing that the higher emissions conform to the SIP so that a nonattainment area can attain and maintain the National Ambient Air Quality Standards. There may be times when the FAA planned action will have to be modified in some way or the emissions offset in some way to conform to the SIP. This whole process exists to prevent Federal agencies defeating efforts to attain and maintain ambient air quality standards by actions which cause emissions changes contrary to those anticipated by the SIP.

The proposed regulation that creates a list of presumed to conform actions means that those actions are removed from reporting and review. There will then be no mechanism by which the State will be informed of the presumed to conform activities. The current proposed regulation may lead to FAA employees subdividing a rather large project into smaller components which individually fall below presumed to conform thresholds and then concluding that the actions are presumed to conform in all respects. A list of presumed to conform actions could be seen as suggesting such action unless there is language to the contrary in the regulation. This approach would make less work for the FAA and the states but potentially at the expense of air quality. The states would be given no opportunity to evaluate the Federal actions while the total emissions, if fairly evaluated, could be above applicable thresholds.

NCDAQ believes there should be some level of information provided to, and oversight provided by states with presumed to conform actions that cause or result in emissions increases so that states are aware of Federal actions and are satisfied that the action is properly categorized. Perhaps a letter could be sent by the FAA describing the presumed to conform action and giving the state a couple of weeks to request additional information. (Page 2)

Response 2.2

The EPA included presumed to conform provisions in the General Conformity Rule for the purpose of reducing the analysis burden on agencies, including notification requirements. The FAA agrees with the EPA that it is good public policy to eliminate unnecessary agency costs for analyzing inconsequential projects that cause few if any emissions and to focus instead on agency actions with the potential to reach regulated emission levels or adversely affect air quality.

While segmentation is not addressed specifically in the general conformity rule, EPA clarified generally that segmentation of larger actions is not permitted in the preamble of the rule, when it rejected use of the concept of tiering under the National Environmental Policy Act. EPA stated: “[t]he segmentation of projects for conformity analyses when emissions are reasonably foreseeable is not permitted by this rule...A full conformity determination on all aspects of an activity must be completed before any portion of the activity is commenced.” 58 FR 63214, 63240. In any event, there is no basis to believe that this list will be used inappropriately to subdivide Federal actions improperly to circumvent general conformity requirements. Notably, FAA was one of the few federal agencies complying with Section 176(c) of the Clean Air Act before Congress clarified and strengthened the requirement in the 1990 amendments to the Clean Air Act.

While larger actions may not be subdivided, when a Federal action consists of two projects, one of which is exempt or presumed to conform, a Federal agency may exclude the emissions from the exempt portion in determining applicability and in making a conformity determination. As EPA stated in the preamble to the final rule: “It is inappropriate to include for applicability purposes emissions as to which no conformity determination is required. Therefore, the final rule provides that emissions that are exempt or presumed to conform are not part of the definition of ‘total of direct and indirect emissions’ and, thus are not required to be part of the applicability or determination analyses.” 58 FR at 63233. EPA gave as an example a Federal action that includes construction of an industrial boiler (whose emissions are subject to pre-construction review and thus exempt) and a separate office building. In EPA’s example, although the direct emissions of the boiler exceed the de minimis levels, because the direct and indirect emissions of the office building are less than the de minimis levels, the action as a whole does not exceed de minimis levels. Larger Federal actions that include emissions from multiple exempt or presumed to conform actions are addressed in response to Comment 2.3, below.

As to additional safeguards under NEPA that will facilitate state oversight of potential air quality impacts of airport actions, see the Response to Comment 1.3 above.

Comment 2.3 - How to Apply [Combined Actions]

The current proposed regulation may lead to FAA employees subdividing a rather large project into smaller components which individually fall below presumed to conform thresholds and then concluding that the actions are presumed to conform in all respects. A list of presumed to conform actions could be seen as suggesting such action unless there is language to the contrary in the regulation. This approach would make less work for the FAA and the states but potentially at the expense of air quality.

There should also be language in the regulation cautioning against subdividing large projects into smaller projects that are presumed to conform. (Page 2)

Response 2.3

The concern about subdividing larger actions is addressed above in response to Comment 2.2. In addition, the FAA, in close consultation with the EPA, has exercised its discretion under 40 CFR §93.153(f) to establish its own procedures for including presumed to conform actions in total emissions for determining applicability and conformity¹. Specifically, the FAA defines the “whole action” for purposes of combined actions to include the portion of emissions attributable to presumed to conform actions. Accordingly, as part of its final list of actions presumed to conform the where a larger Federal action includes multiple presumed to conform actions, FAA has established procedures to include emissions from presumed to conform actions. We note that the US EPA commented favorably upon this approach.

Comment 2.4 - PTC Item #12: Commercial Vehicle Staging Areas

NCDAQ is concerned that the presumed to conform activity thresholds are set at the annual ton limits without a margin for the differences between the past projects evaluated for setting those thresholds and new projects.

There is no reason to expect that emission rates from past actions set a not-to-be-exceed rate. For example, values are given for square feet of commercial vehicle staging area that can be paved and be presumed to conform (Table Ill-I in 72 Federal Register 6646). Suppose the past activity-level-setting project was on flat ground. The proposed one, same size, is on very hilly terrain. The

¹ It is a fair inference from the EPA’s April 9, 2007 letter to FAA that the EPA interprets 40 CFR §93.153(f) to permit the FAA to define total direct and indirect emissions to include presumed to conform actions in certain circumstances, notwithstanding 40 CFR §93.152.

proposed one will require much more cutting and filling with earth moving equipment and will have considerably higher emissions. Annual thresholds could be exceeded using the simple area of paving criteria because the actual emissions per square foot will be higher than those assumed in the presumed to conform table.

Since the project evaluation criteria chosen by the FAA use a single criteria (for example, square feet or gallons) to determine presumed to conform actions, it would be reasonable to cut the activity levels to some fraction of those proposed to give some margin for the variables between past and future projects. Another approach is to set activity limits for project components such as no more than x_1 cubic yards of earth removal, plus no more than x_2 cubic yards of fill, plus no more than x_3 tons of gravel bed, plus no more than x_4 tons of asphalt placed, plus no more than x_5 gallons of marking paint applied, etc. equals a presumed to conform project. Please review your analysis and address these concerns when setting any presumed to conform activity limits. There should be stated size limits for all presumed to conform actions. (Pages 2-3)

Response 2.4

As stated in the introduction to the PTC List, all PTC items were supported by a comprehensive national survey analysis of airport NEPA environmental evaluations over a two-year period. Only the smallest reoccurring airport projects that were consistently and repeatedly justified were selected as candidates for PTC actions. The net project emissions in each PTC category were inconsequentially low – both direct and indirect – and did not come close to exceeding *de minimis* thresholds for any regulated pollutant. Given the extensive data collection and the conservative manner in which these data were applied, proper application of the PTC list of actions to similar types of actions will mean that these actions are extremely unlikely to equal or exceed the *de minimis* thresholds.

The FAA agrees with NCDAQ that FAA employees must carefully compare proposed Federal actions with the types of actions analyzed in developing the PTC List. If a proposed project differs in some critical way that bears upon potential air quality impacts from the type of project analyzed and included in the PTC list, then the PTC List may not be used and a project-specific emissions analysis must be performed. To aid FAA employees, the FAA has also reviewed the list and where appropriate has added additional descriptors of the project and relevant factors and conditions that should govern its application.

Another NCDAQ concern is that not all direct and indirect emissions were considered in determining the *de minimis* emissions activity levels for several PTC actions (i.e., non-runway pavement work, terminal and concourse upgrades, airport security, and commercial vehicle staging areas). However, many of the NCDAQ's examples are not common or prevalent in the airport environment. In an effort to better explain typical airport actions, the FAA has added information and examples to the PTC category descriptions as well as to the responses provided below to the specific PTC items cited by the NCDAQ.

For commercial vehicle staging area projects, PTC actions are limited to commercial vehicle areas (e.g., for parked taxis and limousines) where drivers await access to terminal curbs for passenger pick-up. Based on their function, these projects are adjacent to the terminal area and are typically a portion of an existing parking lot or garage. The flow of commercial vehicles is controlled so that congestion at terminal passenger areas is minimized. NCDAQ's example of excessive "cut and fill" to create a commercial vehicle staging area is unlikely given the proximity of the staging area to terminal curbs.

Comment 2.5 - PTC Item #3: Non-Runway Pavement Work

NCDAQ is concerned that the analysis done to determine emissions did not consider all direct and indirect emissions.

On page 6647 of the Federal Register under Non-Runway Pavement Work it is stated, "Pollutant emissions due to airfield construction are solely from the use of construction equipment and are primarily comprised of NOx, a precursor of ozone development, and CO resulting from the trucks operated to haul the large amounts of stone and gravel that must be used to form the support layers of the paving material."

Since all direct and indirect emissions are to be considered, phrases like, "solely from the use of construction equipment," ...raise caution flags. Did the analysis referenced consider all emissions that may be generated on and off site (inside the nonattainment or maintenance area), direct and indirect? Did the analysis consider VOC from painting the new pavement...? Did the analysis consider the emissions from re-routing automotive and possibly aircraft movements when construction was underway?

Please review your analysis and address these concerns when setting any presumed to conform activity limits. There should be stated size limits for all presumed to conform actions. (Page 3)

Response 2.5

As to the concern that the analysis done did not consider total emissions, see the Response to Comment 2.4 above. For non-runway pavement work, there are many reasons for adding small patches of pavement or concrete to the airfield of an airport. Examples of projects include new airfield roadways for more efficient GSE movement, installation of proper concrete shoulders along existing taxiways and roadways, and the addition of concrete areas to stage airfield support equipment. For the purpose of the PTC list, these actions, which are typically performed in "apron areas" around the terminal and aircraft gates, do not affect airport capacity and can be

handled without major changes affecting airline schedules or the location of ground operations. The amount of pavement work acceptable under the PTC list is generally not enough to require taxiway closures, the re-routing of aircraft, or the transport of large amounts of substrate materials to the airport.

Comment 2.6 - PTC Item #6: Terminal and Concourse Upgrades

NCDAQ is concerned that the analysis done to determine emissions did not consider all direct and indirect emissions.

On page 6648 under Terminal and Concourse Upgrades it is stated, "Construction vehicles and equipment are the only source of emissions when expanding or upgrading terminals." Since all direct and indirect emissions are to be considered, phrases like... "vehicles and equipment are the only source of emissions" raise caution flags. Did the analysis consider VOC from painting... the upgraded terminal? Did the analysis consider the emissions from re-routing automotive and possibly aircraft movements when construction was underway?

Please review your analysis and address these concerns when setting any presumed to conform activity limits. There should be stated size limits for all presumed to conform actions. (Page 3)

Response 2.6

As to the concern that the analysis done to determine emissions did not consider total emissions, see the Response to Comment 2.4 above. The FAA agrees with NCDAQ that the quoted sentence could be read to suggest that other sources of emissions were not considered. FAA has revised the sentence to replace "only source" with "dominant source." However, the intent was to emphasize that upgrades to terminal and concourse areas do not usually involve ground construction or other changes to the footprint of the facility. Instead, these types of projects typically expand existing spaces or optimize their use by reconfiguring the features of the terminal. The PTC List does allow for some minor expansion at a very low level to accommodate additional equipment and functions to a terminal/concourse building provided that these improvements do not enable the airport to accommodate additional aircraft. Associated VOC emissions from painting were not considered because indoor paints contain low VOCs.

Comment 2.7 - PTC Item #8: Airport Security:

NCDAQ is concerned that the analysis done to determine emissions did not consider all direct and indirect emissions.

On pages 6652 and 6653 under Airport Security it is said that dedicated security projects (such as adding security fencing) will be below the de minimus levels and that moving parking from close to the terminal to more distant places will reduce vehicle miles traveled (VMT) on airport property.

If parking spaces are moved to a more distant place they may still be on airport property with added VMT. Adding security fencing could be a truly small project or it could mean miles of fence placed with possibly land clearing and grading and the related emissions.

Please review your analysis and address these concerns when setting any presumed to conform activity limits. There should be stated size limits for all presumed to conform actions. (Page 3)

Response 2.7

As above, please refer to the Response on Comment 2.4 to address the concern about total emissions. Federal actions relating to airport security projects are numerous and almost always consist of federal funding and airport layout plan amendments for fencing, guard gates, and passenger and luggage scanning systems. The start-to-finish times for these projects, some indoors and some outdoors, typically range from a few hours to a few weeks. None of these projects add significantly to airport emissions.

Comment 2.8 - PTC Item #7: New HVAC Systems, Upgrades, and Expansions

NCDAQ is concerned that the use of metric units in defining presumed to conform boiler projects will lead to errors and confusion. NCDAQ is also concerned that the proposed rule will separate emissions related to heating and air conditioning projects from associated emissions due to such things as terminal and concourse upgrades.

Tables III-2 and III-4 use metric units which is at variance with common units of commerce and common units of regulation. Table III-2 does have a pound column but it is to state pounds of emissions per metric ton, or per kiloliter, or per 1000 cubic meters of fuel.

What has been listed is likely to produce misunderstanding and errors in applying this proposed rule. Fuels are commonly sold in tons, gallons, and cubic feet depending on the fuel. Equivalent tables should be offered that completely harmonize with commercial practice. This will avoid errors and differences due to unit conversion errors. Boiler regulations are commonly written in terms of pounds of pollutant per million BTU input. Boiler emission regulations commonly consider heat input per hour in setting emission limits and rule applicability thresholds. Any list of presumed to conform boiler projects should harmonize with this regulatory practice.

If a boiler installation is being done to accommodate a terminal or concourse upgrade or any other project at an airport, the two actions should be evaluated as parts of the same project and the total direct and indirect emissions of the combined actions during construction and in use should be considered with respect to general conformity rules. The presumed to conform activity list should make it clear that it is not a separate action in such circumstance. (Pages 3-4)

Response 2.8

The FAA agrees with the NCDAQ concern about units of measure and the misunderstandings or errors that might occur from using metric units. For this reason and overall consistency, the units in Table III-2 and III-4 have been changed to the English units that are used in U.S. commerce.

With regard to boiler installations, it should be noted that the EPA cited this activity in the preamble to the Rule as an example of the relationship between exemptions and presumed to conform actions. The FAA distinguishes between terminal and concourse upgrades and boiler installations (New HVAC Systems, Upgrades, and Expansions) in its presumed to conform list because the two actions have notable differences: they represent separate emission sources, the boiler emissions could be exempt in some cases under new source review (NSR), and each action may occur as an individual project. If however, a terminal or concourse upgrade project includes a qualifying boiler installation, then we agree with NCDAQ that the emissions from both projects must be added together relative to general conformity emission thresholds.

3. Barbara Lichman, Ph.D., Chevalier, Allen & Lichman, LLP

Comment 3.1 - PTC Item #14: Air Traffic Control Activities [“Exempt” Status]

The NPRM Misstates the EPA’s position on the “exempt” status of ATC actions.

As a threshold matter, the NPRM bases its conclusion that ATC actions should be "presumed to conform" with the Clean Air Act at least partially on a misstatement of the Environmental Protection Agency's ("EPA") Final. Conformity Rule ["The FAA concurs with the EPA determination that ATC activities are de minimis," 72 Fed. Reg. 6,641, 6,654 [emphasis added], thereby attempting to justify the inclusion of ATC actions on the "Presumed to Conform" list through the EPA's imprimatur. The EPA takes no such position.

The EPA expressly excluded ATC actions from the text of the Conformity Rule. See, 40 C.F.R. 93. 153(c)(2). What EPA did say, referring to the list of actions in the preamble cited by FAA as support for its position, was that "in addition to the list in the rule, the following actions are 'illustrative' of de minimis actions". 58 Fed.Reg. 63,214, 63,229. [Emphasis added.] The difference is significant from both a legal and factual perspective.

ATC activities, other than "adopting approach, departure and en route procedures for air operations", 58 Fed.Reg. 63,214, 63,229(2) fit in none of those categories because they are ongoing activities that direct aircraft in a manner which is capable of controlling, or at least contributing to, or detracting from, the emissions resulting from aircraft operations. Moreover, while FAA acknowledges that "increased efficiency and delay reduction would allow traffic volumes to increase", Id., [emphasis added], it inexplicably denies that "traffic volume increase" equates to "increased annual aircraft operations", Id., and ascribes such increased operations solely to unnamed "market forces". The FAA's position flies in the face of basic economic theory.

Further, any action that serves to increase the efficiency of movement into and out of the landside or airside of any airport carries the potential to move actual activity closer to unconstrained activity, and thereby increase emissions to a level that is dependent on the specific undertaken action. To presume that the level of airport operations, and consequent emissions, will not be influenced by an action that disrupts the balance between all these factors, such as Air Traffic Control activity, is at its fundament an unreasonable assumption that cannot be used to justify the inclusion of ATC activities on the Presumed to Conform list. (Pages 1-3)

Response 3.1

We agree with the commenter regarding the quoted sentence and have deleted it. The commenter mischaracterizes EPA's intent and reason for not listing ATC actions in the text of the rule. EPA explained in the preamble "In order to illustrate and clarify that the de minimis levels exempt certain types of Federal actions, several de minimis exemptions are listed in 51.853(c)(2). There are too many Federal actions that are de minimis to completely list in either the rule or this preamble. In addition to the list in the rule, the EPA believe that the following actions are illustrative of de minimis actions: ... (2) air traffic control activities and adopting approach, departure, enroute procedures for air operations..." 58 FR at 63329.

FAA declines to respond to the comment concerning the legal significance of listing ATC actions in the preamble and not the rule. This issue is the subject of pending litigation in City of Las Vegas et al. v FAA et al., Docket No. 07-7-121, 9th Cir CA. The Final Notice demonstrates in any event that these types of actions may be presumed to conform.

In the terminal area, airport ground improvements (e.g., runway extensions) are the dominant factor in system capacity as well as market-driven forces. The PTC List specifically excludes airport actions that would increase airport or runway capacity. Moreover, for capacity-related projects, the FAA analyzes any air traffic procedural changes that are part of the proposed action and the resulting total project emissions (up to the mixing height). FAA airspace redesign projects are more evident above the mixing height in the en route environment (generally above 18,000 feet AGL). These projects are intended to manage the National Airspace System more efficiently by eliminating air traffic "bottlenecks" and expanding overall system capacity.

The commenter overlooks the explanation provided in the Draft Notice about why changes in procedures and other actions to increase the efficiency of flying to, landing at, or taking off from an airport more efficiently do not induce growth in traffic volumes. As noted in the Draft Notice, increases in traffic volume are the result of market forces. Air carriers do not increase operations because more efficient procedures become available, but rather because of increases in market demand and profitability. The courts have agreed with FAA that actions to increase efficiency of movement into and out of the landside or airside of any airport do not necessarily cause aircraft operations to increase.

Comment 3.2 - PTC Item #14: Air Traffic Control Activities [Emissions below “mixing height”]

The NPRM incorrectly presumes that virtually any ATC action below the “mixing height” will conform.

The NPRM presumes conformity for virtually every ATC activity above 1,500 feet AGL, or 1,500 feet below the 3,000 foot AGL altitude at which emissions are typically dispersed by airflow, i.e., the inversion layer, 72 Fed.Reg. at 6,654. The ATC actions presumed to conform below 1,500 feet include undefined and unlimited categories such as those that "increase safety, enhance fuel efficiency, or reduce community noise impacts through engine thrust reductions."

Aside from the overbroad nature of terms like "safety" and "efficiency", the NPRM fails to provide a shred of analytic support for the proposition that ATC actions that increase "efficiency" do not also have the potential to increase emissions below the mixing height. This is particularly the case in a location such as Southern Nevada, a region in severe or extreme nonattainment for criteria pollutants, CO, VOC and NO_x". Without rain, and surrounded by populated mountains in excess of 1,500 feet AGL, pollution between 1,500 feet and 3,000 AGL is a serious issue.

The NPRM nevertheless fails to establish analytically that: (1) increased "efficiency" will not lead to increased operations, and resulting emissions; and (2) that the creation of additional emissions at altitudes below 3,000 feet in areas like Las Vegas will not lead directly to violations of the Conformity Rule.

In summary, the City strongly urges the FAA to exclude ATC activities from the NPRM, and confront the potential air quality issues they raise by working with communities in good faith to ensure that ATC actions meet the fundamental purposes of the Conformity Rule, to eliminate, reduce or prevent the occurrence of new violations of ambient air quality standards.

Response 3.2

The FAA’s analysis distinguishes between changes in air traffic procedures above and below the EPA established mixing height, which is an important boundary in regulated local air quality analysis for general conformity. The mixing height is defined as the height above the surface, denoting the boundary layer near the surface of the earth where relatively vigorous vertical mixing of air pollution occurs. (“Mixing Heights, Wind Speeds, and Potential for Urban Air Pollution Throughout the Contiguous United States”, USEPA, January 1972.) Pollutants emitted below the mixing height contribute to the degradation of local air quality, where EPA’s national ambient air quality standards apply to protect human health and welfare.

The calculation of emissions in a general conformity applicability analysis occurs below the average local mixing height (typically

3,000 ft.), which is the most highly controlled airspace around an airport. In the terminal area, close-in approach and departure procedures are heavily constrained by runway alignment, safety, aircraft performance, weather, terrain, vertical obstructions, and noise mitigation programs. As limited by such constraints, proposed improvements in ATC procedures below 3,000 feet are typically proposed to facilitate community noise mitigation (reduced engine thrust) or to ease ground congestion or queuing (reduced aircraft ground delays and fuel burn). Given their purpose and need, these improvements also reduce emissions.

In terms of analytic support, as explained in the Draft Notice, the PTC item, “Air Traffic Control Activities and Adopting Approach, Departure, and Enroute Procedures for Air Operations” is based on agency experience, and a FAA research study completed in September 2000 (FAA-AEE-00-01, DTS-34). This study demonstrated that local air quality impacts do not result from aircraft emissions above the mixing height, even with worst-case assumptions. Below the mixing height, aircraft emissions are evaluated in general conformity on the basis of net emission increases or decreases due to the project. As noted above, air traffic procedures in terminal airspace around the airport are tightly constrained for many reasons. Moreover, FAA research and study experience suggests that procedural changes below the mixing height would have very little effect on emissions of criteria pollutants. Indeed, the common reasons for modifying close-in procedures are to improve operational efficiencies (e.g., reduce delays) and to reduce community noise impacts, both purposes of which generally decrease airport emissions (e.g., idle reduction, de-rated thrust settings). EPA considers numerous factors, including weather and terrain within its local measurement programs and area nonattainment and maintenance designations. The worse the area designation, the more stringent the classification, the lower the *de minimis* threshold, and the more difficult it is for a project action to be presumed to conform.

The Final Environmental Assessment that the FAA issued in November 2006 for a proposed right turn procedure at McCarran International Airport provides further documentation to support this presumption for changes in ATC procedures. The air quality analysis conducted indicated that the procedures would decrease criteria and precursor pollutant emissions (carbon monoxide, volatile organic compounds, nitrogen oxides, sulfur dioxide, particulate matter) because of reduced taxi times and queue delays on the ground.

As to increased efficiency potentially causing growth in traffic and increased emissions, see the response to Comment 3.1 above. As to the creation of additional emissions below 3,000 feet in areas like Las Vegas, we note the Final EA mentioned above. Beyond this, it would be inappropriate to comment in light of the pending litigation referenced in response to Comment 3.1 above.

4. Chris N. Salmi, Assistant Director, State of New Jersey, Department of Environmental Protection (NJDEP)

Comment 4.1 - PTC Item #14: Air Traffic Control Activities

The basis for the FAA's finding for air emissions between 1500 feet above ground level and below the mixing height does not consider the latest scientific evidence that emissions in the boundary layer are transported and contribute to nonattainment.

The draft notice indicates that "air traffic actions below the mixing height are also presumed to conform when modifications to routes and procedures are designed to increase safety, enhance fuel efficiency, or reduce community noise impacts by means of engine thrust reductions." The draft notice indicates that, "the results of FAA research on mixing heights indicated that changes in air traffic procedures above 1,500 feet above ground level and below the mixing height would have little if any effect on emissions and ground concentrations."

In light of the meteorological effects and the lack of progress in improving the United States aircraft engine standards, any increase in activity could lead to continued nonattainment, therefore, these air traffic actions can not be presumed to conform. (Pages 1-2)

Response 4.1

See the Responses to Comments 3.1 and 3.2 above for a discussion of air traffic actions below the mixing height. The EPA considers emissions from all sources below the mixing height, including aircraft and other airport sources within its local measurement programs and area nonattainment and maintenance designations. The worse the area designation, the more stringent the classification, the lower the *de minimis* threshold, and the more difficult it is for a project action to be presumed to conform. To this extent, the contributions from all emission sources are incorporated into the general conformity process. Although the commenter generally refers to "the latest scientific evidence that emissions in the boundary layer are transported and contribute to non-attainment", no specific evidence is provided that FAA's determination is erroneous. Moreover, FAA is unaware of any scientific evidence that contradicts its findings in this area. Should FAA be presented with, or otherwise become aware of, any scientific evidence that the determination is erroneous, FAA will re-evaluate and modify the PTC list as appropriate. See 40 CFR § 93.153(f).

Comment 4.2 - PTC Item #9: Airport Safety and PTC Item #10: Airport Maintenance Facilities:

Insufficient supporting information, as defined in Section 93.153(g)(1) or (2) of the General Conformity regulation, was provided in the draft notice for the Airport Safety and Airport Maintenance Facilities categories. NJDEP is concerned that the emissions associated with building, replacing, or expanding may be above the de minimis levels and may not qualify as presumed to conform. (Page 2)

Response 4.2

The commenter expresses concern as to whether the building, replacing, or expanding of airport facilities related to airport safety and airport maintenance facilities may be sizeable from an emissions perspective. Main examples of safety-related projects are improvements to Runway Safety Areas (RSAs) and Aircraft Rescue and Firefighting Facilities (ARFFs). Projects involving airport maintenance facilities typically involve vehicle service centers, fueling stations, and storage areas for snow removal and maintenance equipment. It should be noted that the presumed to conform status for Federal actions relating to airport maintenance facilities do not extend to broader projects and actions that also involve the maintenance facilities of airlines or other tenants at the airport.

All agency actions pertaining to PTC actions were derived from a national evaluation of all airport NEPA environmental reviews over a 2-year period. This broad review captured the vast majority of small and reoccurring airport projects that consistently and repeatedly result in low emissions levels – both direct and indirect – and that do not come close to exceeding the *de minimis* thresholds for criteria pollutants. If a proposed project is not appropriately reflected by the PTC categories, for example a large new maintenance facility construction project with reasonable potential to reach *de minimis* levels, the project should not be designated as presumed to conform and should be further analyzed as part of the applicability analysis.

Comment 4.3 - How to Apply [Notification]

NJDEP is requesting that the FAA consult with the applicable State Implementation Plan air pollution control agencies before a decision is made to exclude a presumed to conform action if more than one is present in a combined action. (Page 2)

Response 4.3

As stated in Response 2.2, the EPA included the presumed to conform provision in the General Conformity Rule to reduce the analysis burden on agencies, including notification requirements, for actions causing few if any emissions. The FAA agrees with the EPA that it is good public policy to eliminate unnecessary agency costs for analyzing inconsequential projects and to focus instead on agency actions with the potential to reach regulated emission levels or adversely affect air quality.

As noted above in the Response to Comment 1.3, the States will typically have the opportunity to review presumed to conform actions that are part of larger NEPA actions and air quality analysis conducted for environmental impact statements and environmental assessments (see FAA Order 5050.4B, Chapter 11 and Section 708). In such actions, the FAA requires airport sponsors to model and evaluate PTC actions in the same manner and to the same extent as other elements of the project and to list presumed to conform actions separately in the emissions inventory and other study documentation for clear identification.

Comment 4.4 - How to Apply [Combined Actions]

Section IV of the draft notice discusses how the FAA will apply the presumed to conform list. The draft notice indicates that "agency officials maintain the right to select the specific presumed to conform action to exclude if more than one is present in the combined action." (Page 2)

Response 4.4

See Response to Comment 2.3. The FAA believes that it is reasonable for responsible agency project managers to decide which PTC action is excluded if more than one is present in a combined action. This approach is consistent with the fact that general conformity is the responsibility of the Federal agencies. Based on EPA guidance, Federal agencies implement the Rule and its requirements, including the identification of exempt actions, the management of the applicability analysis and emission inventories, and the development of conformity determinations. The FAA, in close consultation with US EPA, has exercised its discretion and established its own procedures for including presumed to conform actions in total emissions².

Based on this and other related comments, the guidance on how FAA and airport project managers should implement the PTC List and document its use (see "How to Apply" section) has been revised for greater clarity.

² It is a fair inference from the EPA's April 9, 2007 letter to FAA that the EPA interprets 40 CFR §93.153(f) to permit the FAA to define total direct and indirect emissions to include presumed to conform actions in certain circumstances, notwithstanding 40 CFR §93.152.

5. Jessica Steinhilber, Director of Environmental Affairs, Airports Council International – North America (ACI-NA), in coordination with the Air Carrier Association of America (ACAA), the Air Transport Association (ATA), and the Airport Consultants Council (ACC)

Comment 5.1 - Exemptions: Routine Maintenance and Repair Activities

...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.

The General Conformity regulations include an exemption for Routine Maintenance and Repair Activities, including repair and maintenance of administrative sites, roads, trails, and facilities. No additional clarification on what is considered routine maintenance and repair was considered necessary by EPA in the preamble to the final rule. 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 before the work occurred" qualifies for the exemption. 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." 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. (Pages 2-3)

Response 5.1

In an applicability analysis, PTC actions fall between the Rule’s standard exemptions and detailed modeling analysis of proposed project emissions. The FAA believes that it is useful to clarify the existing exemptions in the Rule and their relation to aviation. By so doing, the agency seeks to preserve the appropriate use of these exemptions. By citing aviation examples of exempt actions in the PTC List, the FAA hopes to reduce uncertainty about when exemptions can be used, to avoid over-application of exemptions, and to clarify when a proposed action is exempt versus presumed to conform – which is linked to the supporting agency documentation.

The FAA appreciates the concern expressed about clearly distinguishing between exempt and presumed to conform activities. We have carefully reviewed the language of the exemptions, relied on agency experience, and provided a clear rationale for distinguishing between these activities. For example, with regard to the exemption for routine maintenance and repair activities [40 CFR 93.153(c)(2)(iv)], the FAA states that, “Airport maintenance, repair, removal, replacement, and installation work that matches the characteristics, size, and function of the facility as it existed before the placement or repair activity typically qualifies as routine maintenance and repair for purposes of general conformity.” Routine maintenance and other exempt actions may increase emissions slightly but by definition generally do not exceed the *de minimis* thresholds.

Like exemptions, PTC actions cause few if any emissions and do not increase airport capacity or alter the operational environment of an airport in such a way as to increase air emissions above *de minimis* thresholds. Any increases to airport capacity and resulting emissions would be incidental if they were to occur.

However, PTC actions differ from exemptions in several respects: 1) they are aviation-specific; 2) they are supported by agency analysis and documentation; and 3) they involve different forms of activity, for example: upgrades, modifications, modernizations or conversions, and expansions that might result in minor changes to the airport and existing facilities. For these reasons, actions that are presumed to conform are not considered exempt (e.g., routine maintenance). Prior to the development of the PTC List, actions that are now presumed to conform required an emissions inventory and analysis to prove that project emissions were below *de minimis*.

Comment 5.2 - Exemptions: Land Transfers

...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.

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. (Page 3)

Response 5.2

As to the effect of specifically listing certain actions, see the Response to Comment 5.1 above. The FAA believes that the PTC List will reduce agency involvement on small projects causing few if any emissions and thereby provides an important streamlining benefit.

The FAA agrees with ACI-NA et. al. that a simple transfer of land is exempt, mandating no further analysis or possible conformity determination, provided that there is no reasonable expectation of a change in land use. Under this exemption, the transfer must not involve any reasonably foreseeable direct or indirect emissions from the new status. An example would be transfer of ownership and operation of an existing air traffic control tower or navigational system from the FAA to a local airport authority.

Comment 5.3 - PTC Item #1: Pavement Markings, PTC Item #6: Terminal and Concourse Upgrades, PTC Item #12: 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. (Page 3)

Response 5.3

[See Response 5.1 above.] The FAA believes that clarifying how the existing exemptions in the Rule apply to the airports program serves to facilitate their proper use and to protect their status. Like exempt actions, PTC actions cause few if any emissions. Where feasible, the additional quantification of PTC actions supplements airport survey data and contributes to clear size limitations for project emissions, above which further applicability analysis is warranted. Documentation and analysis of PTC actions is not intended to limit the scope of exemptions. Rather, PTC actions are intended to reduce the analytical burden for minor actions that were previously modeled in detail – often repeatedly for similar projects that always resulted in few if any emissions.

It is important to note the basic difference between routine maintenance of existing facilities and presumed to conform upgrades and improvements to airport facilities. For example, on pavement marking projects, the distinction is small but definable. Re-stripping over existing lines would be considered routine maintenance whereas the stripping of new lines or patterns and the likely application of more paint would be presumed to conform under the limits provided. For commercial vehicle staging areas or non-runway airfield areas, repair work and patching would be considered routine maintenance whereas improving or strengthening these areas in different ways (e.g., using new or better materials) would be considered a possible PTC action.

Comment 5.4 - PTC Item #6: Terminal and Concourse Upgrades

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. 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. (Page 4)

Response 5.4

The FAA assumed that administrative areas were included in the expansion or upgrading of interior terminal space to improve passenger services and convenience. Administrative areas and offices have been added to the examples provided in this PTC category.

The square footage limits provided in Table III-1 encompass project activity that takes place or results within or outside of existing terminal walls. More often, this type of project will describe modernization efforts within existing terminal walls. However, eligible activity could include increases in the terminal area, such as an addition to an existing facility. In all cases, such work cannot modify or increase airport capacity or change the operational environment of the airport in such a way as to increase emissions above *de minimis* thresholds.

Comment 5.5 - PTC Item #7: 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. (Page 4)

Response 5.5

ACI-NA et al. are correct in stating that if an HVAC project yielded emissions above the de minimis thresholds, it would trigger New Source Review (NSR) requirements for major projects, which would then exempt it from general conformity. However, for those HVAC projects that do not exceed the de minimis thresholds, the minor increases in emissions are considered Presumed to Conform (albeit potentially subject to state-imposed permitting requirements). For this reason, it is useful to retain HVAC projects on the PTC List even though such projects are not generally at issue. In addition, the FAA has clarified that PTC actions for terminal and concourse upgrades do not include new HVAC systems, upgrades, or expansions, which are separately evaluated and categorized in the List.

Comment 5.6 - PTC Item #8: 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, 111.8]. 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. (Page 5)

Response 5.6

This comment is well-taken. However, because our PTC survey and analysis was limited to security-related projects that involved post-9/11 restrictions on close-in parking, we are unable to broaden this PTC item to non-security parking modifications. For example, the construction of new or expanded airport parking lots for non-security purposes, including the development of rental car consolidation facilities, should be analyzed for emissions, especially when such projects are part of other airport modernization work or have the potential for increasing passenger demand and operations.

Comment 5.7 - PTC Item #9: 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." (Page 5)

Response 5.7

With regard to the PTC item on airport safety, The FAA was unable with its survey data to differentiate between public and private road construction (e.g., converting an airfield patrol road from dirt to asphalt) and/or road operations from the standpoint of emissions. For this reason, the agency must maintain the general exclusion of all new roads or relocations on this PTC action.

Comment 5.8 - 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. (Page 5)

Response 5.8

The quantitative analysis supporting the emission calculations from construction equipment used older EPA references to capture their higher emission factors and, in turn, conservative emission totals for construction activities. This methodology provides a buffer to accommodate reasonable uncertainties in the PTC List and the range of potential airport construction projects.

Comment 5.9 - PTC Items: Recommended Additions

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. (Pages 5-6)

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

Response 5.9

In developing and documenting the PTC List, the categorical exclusions (CATEX's) in FAA environmental Orders 1050 and 5050 were carefully examined to ensure greater consistency between the agency's PTC List and NEPA guidance.

The FAA welcomes the submission of new ideas for possible other PTC items. The examples provided ACI-NA et. al. above need to be evaluated and defined further. It should be noted, for example, that some airfield improvements to fillet, groove, rebuild, and resurface non-runway apron areas may be presumed to conform under the current list.

There is no general conformity restriction on the continued development of the PTC List. The biggest limit is agency resources. Developing the PTC List involved a substantial commitment of FAA time and resources. Despite less "learning curve" from being the first Federal agency to develop a PTC List, further development of the PTC List would require a significant additional effort. Besides the value of expanding the PTC List, the FAA may elect to simply update certain PTC items in the future in response to improvements in emissions data, air quality assessment tools, better building and construction methods, etc.

6. Timothy Pohle, Assistant General Counsel, Environmental Affairs, Air Transport Association of America, Inc. (ATA)

Comment 6.1 - PTC Project Descriptions and Justification (see Section III)

...ATA writes separately to emphasize that the mere fact that an action may not currently be included in an FAA "presumed to conform" list does not, in and of itself, mean that it requires, or should be presumed to require, a conformity analysis or determination consistent with 40 C.F.R. §93.153(b) or (c)(2). In particular, decisions by the FAA regarding approvals of operations that are of the same type and nature of operations already occurring at an airport should be determined based solely upon the considerations identified in the applicable FAA statutory or regulatory provisions - i.e., Title 49 of the United States Code and the Federal Aviation Regulations (codified at Title 14 of the Code of Federal Regulations), and relevant FAA interpretive guidance. By the same token, although FAA identifies "aviation noise abatement" among FAA rulemaking and policy activities exempt from general conformity analysis (72 Fed. Reg. at 6643), the mention of noise abatement in this context should not necessarily obviate any need for conformity analysis, if otherwise required, where new, generally applicable aviation noise abatement procedures directly cause increased emissions. (Pages 1-2)

Response 6.1

If a project or action is not exempt and it is not contained on the PTC List, it must be analyzed in detail to determine applicability of general conformity requirements. As noted in Response 5.9, the FAA could add more items to the PTC List in the future, thereby removing these additional actions from the requirement for detailed emissions analysis. A conformity determination is only necessary if the detailed analysis shows that total direct and indirect emissions caused by the project equal or exceed the *de minimis* thresholds.

FAA approvals of requests by air carriers to amend their operating specifications are not included in the PTC List and require an emissions analysis. The noted reference to "aviation noise abatement" is specifically related to the existing exemption for "Rulemaking and Policy Development." Policy and technical guidance for noise programs helps to illustrate this exemption for FAA actions because this work is typically administrative in nature and does not involve changes in operations or emissions. In contrast, noise abatement procedures are presumed to conform as air traffic actions unless they differ significantly in nature from the types analyzed in developing the list.

Comment 6.2 - PTC Item #14: Air Traffic Control Activities

[footnote] In addition, in the Federal Register Notice, FAA describes air traffic actions below the mixing height as presumed to conform when modifications to routes and procedures "are designed to increase safety," among other things. 72 Fed. Reg. at 6654. However, the presumption should not be limited to actions designed to actually "increase" safety, but should also extend to actions designed to "preserve" safety.

Response 6.2

The FAA agrees with the ATA that “preserving” and “increasing” safety are similar from an emissions standpoint. However, this particular section and reference have been revised to emphasize that air traffic changes in the terminal area are generally performed for operational efficiencies (e.g., to reduce delays) or noise mitigation.

7. Tom Coda, U.S. Environmental Protection Agency (EPA), Office of Air Quality and Standards, State and Local Programs Group

Comment 7.1 - Documentation and How to Apply

It appears the FAA has been diligent to document a reasonable historical and technical justification to determine that these categories of actions typically fall below de minimis thresholds for applicability of general conformity requirements. Section IV which addresses how to apply presumed to conform actions is a well constructed guide that reflects a cautious and conservative approach to evaluating large actions that may include multiple categories of presumed to conform activities.

As a whole I applaud the FAA's efforts in issuing this Draft Notice in order to focus time and attention on projects with the greatest potential for emissions increases. The use of this list should provide better focus for your air quality evaluations and enable FAA to more effectively manage its general conformity responsibilities.

Response 7.1

As the first Federal agency to develop a PTC list, the FAA needed to coordinate closely with the EPA, which manages the PTC provision under the General Conformity Rule and the Clean Air Act. The EPA provided sound advice and guidance to the FAA and other Federal agencies on this subject for many years. Further, the EPA was very responsive whenever there was a question on the process of developing the List. In the end, the FAA believes that its careful approach to the PTC List, including how actions are documented and analyzed, how items can be used, and how limits on the use of the List apply, achieves the right balance of providing a streamlining benefit without any loss of commitment or effort on the agency's part to improve airport air quality and meet its regulatory responsibilities.