April 11, 2008

Mr. Tom Coda
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Submitted via E-Mail to a-and-r-docket@epa.gov

Re: **Revisions to the General Conformity Regulations (Docket ID No. EPA-HQ-OAR-2004-0491)**

Dear Mr. Coda:

Airports Council International-North America (ACI-NA) appreciates this opportunity to provide comments on the Environmental Protection Agency's (EPA's) proposed revisions to the general conformity regulations. ACI-NA represents more than 360 airports in the United States and Canada which enplane 95 percent of the domestic and nearly all of the international passenger and cargo traffic in North America. Nearly 400 aviation-related businesses are also members of ACI-NA.

ACI-NA appreciates EPA's attempts to reduce the burden to the air transport industry of complying with the general conformity regulations. As you know, ACI-NA has worked closely with EPA throughout the rulemaking development process, and we are pleased to see that EPA has addressed several concerns that ACI-NA and airports have expressed over the years regarding the general conformity regulations. While we offer the constructive comments detailed below, we also express our overall gratitude that EPA has heard our issues and is attempting to work with us to address many of those concerns. We especially appreciate the personal efforts you have undertaken to explain the program to us and listen to our concerns.

1. Facility-Wide Emission Budget Approach

ACI-NA applauds EPA's recognition of the facility-wide budget approach, which makes explicit an approach that the original conformity rule always allowed implicitly. This issue has been a concern of airports for a long time, dating back to the EPA/Federal Aviation Administration (FAA) Stakeholder process in the late 1990s/early 2000s. There are, however, areas where the proposed rule can be improved.

We recommend removal of the proposed language in Section 93.161(a), which allows that third parties "authorized by the agency" may coordinate with the state, tribal, or local air

agency on facility-wide emissions budgets. This language suggests an authorization requirement that is not supported by Section 176(c) of the Clean Air Act, and is inconsistent with previous EPA guidance. First, the language on its face indicates that the "agency" authorizing the cooperation would be the air agency itself, which would be redundant and unnecessary. However, the preamble suggests that EPA meant that the authorizing agency would be the federal agency with oversight responsibility, *i.e.*, the agency with the conformity compliance obligations (73 Fed. Reg. 1402, 1416). There has never been a requirement that local entities, such as airports, be required to obtain authorization from the federal government before cooperating with state or local air agencies in the development of a State Implementation Plan (SIP). This is not required by the Clean Air Act and is inconsistent with the constitutional autonomy provided to state governments and their subdivisions. Further, it is inconsistent with prior EPA/FAA guidance that has encouraged airports to work with air agencies without imposing any federal authorization requirement. For example, *General Conformity Guidance for Airports* (Sept. 25, 2002) states, "operators should work closely with local and State air quality agencies to ensure that the SIP accurately reflects all emissions at the airport and growth rates for operations at the airport." Similarly, on a practical level, the rule is ambiguous and confusing regarding what type of authorization local entities would need to obtain or the form it would take. State, tribal, and local air agencies have the authority and incentive to realistically plan for possible changes to airports or other facilities subject to conformity requirements and do not need an additional layer of federal approvals.

Additionally, while an emissions budget seems an efficient mechanism for general conformity purposes, it is unclear if or how a budget could be enforced in the airport setting, outside of the conformity process. We are particularly concerned due to the number of areas that are expected to experience future climate-change related degradations in local air quality, requiring more numerous and more stringent SIPs. Situations may arise where the total emissions for an airport are above the budgeted levels, but the sources causing the excess emissions are not under the airport's ownership or control. The primary sources of emissions that would likely exceed a facility-wide budget are aircraft, which are federally pre-empted from state or local control. This places the airport operator in a precarious position of potentially being responsible for emissions over which the operator has little or no control. It would also be helpful to clarify in the preamble to the final rule that a facility-wide budget prepared for the purposes of Section 93.161 has no application beyond SIP planning and the general conformity rule. For example, most ground support equipment (GSE) is deployed by individual airlines or third-party ground support providers on contract with airline companies, not airport operators.

A number of airport operators have expended extensive efforts to develop technical support documents that were used by their states in developing SIPs. These airport operators have worked to get their airport and future project emissions accurately accounted for in the SIP, but these inventories are not referred to as facility-wide budgets. The major airports in areas such as Atlanta, Denver, and Seattle are examples where such technical reports were prepared for the large commercial service airports; these reports are attached in some form to the SIP, which specifically itemizes emissions. These inventories identify emissions associated with a single airport for aircraft, GSE, airport parking facilities, and in many cases all ground access vehicles and construction emissions. These reports are part of the official records of the SIP in these locations. Given that airports were encouraged by EPA, states, and organizations like ACI-NA

to undertake such efforts, we strongly encourage EPA to grandfather these emission accountings as acceptable for conformity purposes or make Section 93.161 sufficiently flexible to allow their continued use.

Proposed Section 93.161(a)(5), requiring "specific measures to ensure compliance with the budget," is also problematic and should be deleted. It seems to put federal and federally-sponsored activities on a different plane than other activities in a SIP. Many of the activities subject to conformity determinations, including airport construction, airspace decisions, forest management, or other activities on federal land, involve predictions for emissions from mobile and area sources that are not fully in the control of the federal agency or project proponent. For example, the emissions budgets estimated for an airport construction project are based on predictions of construction efforts many years into the future, as well as operational emissions from aircraft and other sources operated by third parties, such as airlines or others. It is essential that airports and federal agencies provide the best possible, and generally conservative, estimates of their emissions. However, it is simply not possible to "ensure compliance" with a budget, any more than state highway departments or metropolitan planning organizations can "ensure compliance" with emissions budgets in the transportation conformity requirements. Instead, there should be a requirement that the federal agency or project sponsor provide information to the relevant air agency to ensure that actual emissions are reasonably tracked. In the event of excess emissions, the air agency can determine how to reconcile actual emissions with the necessary attainment or maintenance budgets. Also, air agencies can already, on a project by project basis, negotiate contingent offsets, mitigation, or other measures to cover potential excess emissions with the federal agency or project sponsor. Because the air agencies have this flexibility and power, creating a vague new requirement "to ensure compliance" is unduly burdensome and unnecessary.

2. Airport Emission Reduction Credits

ACI-NA supports EPA's recognition of the use of Airport Emission Reduction Credits (AERCs) for conformity purposes. However, we think it is problematic that the revisions remain silent on the Voluntary Airport Low Emissions (VALE) program's designation of AERCs as design measures instead of offsets. We respectfully ask that the text be clarified to note that AERCs can be used in the applicability analysis process, such that once the project-related emissions are calculated, the AERCs would then be subtracted from the total direct and indirect emissions, reducing the net emission increases that must be compared to *de minimis* thresholds. We believe that as drafted, there could be confusion that the AERCs would only be counted as offsets and used in the full conformity determination process.

We also suggest that consideration be given to the inclusion of a mechanism to allow the use of "local" emission reduction credits for general conformity purposes. For example, Discrete Emission Reduction Credits (DERCs) generated and utilized under New Source Review (NSR) permitting programs for short-term (annual) emission offsets, or other similar local/state-based credits that may be derived for stationary or mobile sources, could be utilized as design measures to reduce or offset emissions from temporary, short-term activities. We recommend that the federal regulations clearly and definitively add a requirement, in cases where states have delegated authority, that local air districts shall accept the emission reductions achieved through

VALE and Inherently Low Emission Airport Vehicle (ILEAV) projects as AERCs for use in general conformity analyses.

3. Inter-Precursor Mitigation Measures and Offsets

While ACI-NA supports the proposed Section 93.164, which allows inter-precursor mitigation measures and offsets, we recommend additional clarification of the proposed regulatory language to allow such inter-precursor trades to be used in conformity applicability analyses.

4. Timing of Offsets and Mitigation

ACI-NA supports the proposed flexibility in the timing of offsets and mitigation proposed in Section 93.163. As noted in the Federal Register notice and in our comments on construction emissions below, there is usually a short-term peak of construction emissions for projects subject to general conformity. It would make better environmental and economic sense to seek longer-term offsets and mitigation and to provide long-term environmental benefits at a lower cost, than to concentrate resources for a short-term fix.

The proposed Section 93.163(b)(3) is unclear regarding what entity would determine whether the alternative time period for mitigation would trigger the three statutory factors for conformity, and how such an entity would make this determination. We recommend amending the proposed Section 93.163(b)(3) to make clear that the state, tribal, or local air agency should make this determination (e.g., "The State determines that the offset or mitigation measure…"). These agencies are in the best position to make such a determination, based on their familiarity with their SIP, local monitoring, local modeling, the location of the proposed emissions and offsets, and other pertinent considerations.

5. Construction Emissions

The EPA has sought comments regarding whether to exempt emissions from short-term construction activities, as well as the appropriate definition of a "short-term project." ACI-NA supports the concept of excluding short-term construction emissions from general conformity analysis. Construction emissions from airport activities subject to the conformity rule are generally only a very small percentage of the offroad-emissions budgets for the nonattainment or maintenance area (or the construction budgets, if separately listed). Further, these emissions generally peak for a short time (often a year or two), out of a construction period that itself lasts for a relatively short time. Nonetheless, a disproportionate amount of time is spent in the conformity process, addressing construction-related emissions. These resources would be better spent on long-term emissions reductions.

The proposed rule states that "States and local agencies can reasonably anticipate and plan for construction emissions from highway and mass transit activities based on regional transportation plans and historic activities." For this same reason, we believe that airport infrastructure related construction activities can also be anticipated. Airport operators prepare long-range airport master plans every 4-8 years, similar to the regional transportation plans for

surface modes. These plans undergo public outreach and review, including participation by most local planning agencies. Airport master plans typically identify the long-range development that is anticipated based on changes in local air travel demand. As airports are ground movement activity centers, the local metropolitan planning organizations use these plans for purposes of developing the regional transportation plans. Further, similar to the roadway infrastructure development, a history of infrastructure maintenance and renewal has developed over time for airport-related infrastructure. We believe that most states reflect these conditions in the off-road emissions inventories and thus, have embraced the construction footprints associated with planned airport improvements, making the evaluation in a general conformity process unnecessary.

EPA has identified two options for the durations of exempt short-term projects: a) a period of up to 2 years, and b) a period of less than 5 years (similar to transportation conformity). We believe that the two conformity regulations should be consistent, and thus support a period of at least five years. This should also be tied with a requirement that the applicability of conformity analysis for construction emissions must depend on the project exceeding some threshold percentage of nonattainment or maintenance area construction and/or offroad emissions. The extent to which construction emissions from a project would be material to attainment or maintenance depends on whether the project constitutes a significant proportion of nonroad emissions budgets. Further, we believe many analyses clearly show that airport construction projects do not have significant adverse impacts on local air quality.

To support our assertion, we are submitting material from a final conformity determination that was made for Los Angeles International Airport (LAX) in 2005. That federal action included FAA approval of the National Environmental Policy Act (NEPA) Environmental Impact Statement (EIS) and Airport Layout Plan for a large redevelopment and improvement of the airside and landside over a 5-year period. The LAX Master Plan Conformity determination compared construction NOx emissions to the SIP budgets for several source types: diesel trucks, nonroad mobile vehicles, and other commercial service equipment. The conclusion of this comparison was that the peak year of construction emissions from the LAX Master Plan project would only be a small fraction of the budgeted amounts, depending on the specific category of source and budget. Enclosed is the Final General Conformity Determination document for the LAX Master Plan project, which supports that conclusion. We believe that SIP budgets should, and typically do, include growth factors for construction equipment. Further, the construction equipment used on an airport-related construction project is deployed from the local construction equipment mix/inventory. Thus, to the degree that the SIP reflects emissions from the local/regional construction equipment mix/inventory, the emissions from the use of this equipment on an airport project would be appropriately included in the SIP.

For this same federal action (the LAX Master Plan), PM_{10} emissions from combined operations and construction activities were modeled. Through that analysis it was shown that this large construction project would not cause or contribute to a violation of the PM_{10} National Ambient Air Quality Standards (NAAQS).

6. Time Periods Beyond Those Covered in a SIP

In developing the Airport Conformity Q&A, this was an issue on which agreement could not be reached agreement between FAA and EPA. This issue was problematic in specific locations where early SIPs were developed, and where time had passed such that the SIP was nearing the end of its planning horizon, and a new SIP was not in place. We do not agree with the single approach identified by the draft rule in addressing this issue. As identified, EPA would presume that if a project would occur in a timeframe later than that addressed by the SIP, the SIP emissions should be assumed to use the last year of emissions (e.g., emissions in 2015 assumed to occur in 2017). In essence, the SIP would be "flat lined" for all subsequent years. Alternatively, EPA suggests that a "budget" could be developed, and then the State could seek a modification to the SIP to adopt the budget accommodating the federal action.

We believe that such an approach may not recognize unique circumstances and local understandings. Rather, we encourage the EPA to consider a supplemental approach. We offer for consideration an approach where a future emissions level is identified for the affected sources in a collaboration of local and state agencies. We believe that most regions begin SIP planning work well before the SIP materials are due to EPA. Through that process an understanding of the unique local conditions evolves. We believe if the flat line does not suit the situation, a collaborative approach to select an emissions level would benefit all parties. However, for the reasons noted for construction emissions, we encourage that a "budget" not be used.

If such a collaborative approach were used, it would likely reflect the direction that the future SIP/maintenance plan would be targeting, ensuring consistency of projects, emissions budgets, and SIPs. Unfortunately, as drafted, the requirement to submit a revised SIP within 18 months of adopting an emissions budget would serve as a discouragement to such collaboration. We believe that where collaboration has occurred, all parties have benefited.

7. Exemption for Minor Source New Source Review

We support EPA's proposal to exempt revisions covered by minor source NSR permits, where the NSR program has been approved by EPA. The proposed change recognizes that State and local air agencies address and have control over these emissions, so that redundant treatment in a conformity analysis is unnecessary. The proposed revision would reduce the burden of compliance with conformity requirements without affecting State and local attainment and maintenance of air quality standards.

However, we recommend the following revisions to EPA's proposed rule: (1) in Section 93.152, include a definition of a "minor new or modified stationary source," and (2) in Section 93.153(d)(1), address the fact that the statutory New Source Review and Prevention of Significant Deterioration programs do not *require* minor source permit programs. The current language of Section 93.153(d)(1) provides that the general conformity exception would apply only to minor new or modified stationary sources "that *require* a permit under the new source review (NSR) program (section 173 of the Act) or the prevention of significant deterioration program…" Minor sources do not generally *require* a permit under the statutory terms of the

Clean Air Act. Thus, to reflect the intent of EPA's proposed change, the regulation should be revised to exempt emissions *authorized under EPA-approved NSR programs* for minor sources.

8. Criteria for Determining Conformity

EPA sought guidance regarding whether, in Section 93.158(a)(5)(i), an agency should be able to demonstrate conformity based on an air agency's determination that the emissions from the action, along with all other emissions in the area would not exceed the emission budget established in a Reasonable Further Progress ("RFP") or similar plans other than an attainment or maintenance SIP. 73 Fed. Reg. 1402, 1415 (Jan. 8, 2008). ACI-NA strongly supports this important addition of flexibility to the conformity process. In the vast majority of conceivable cases, an air agency's inclusion of a project in RFP budgets adequately ensures timely attainment of the NAAQS, because the SIP revision would still need to show overall progress in emissions reductions from a nonattainment area. The state, local and tribal air agencies are best positioned to determine whether a federal project will threaten their ability to attain the relevant NAAQS and will not submit such an RFP or other SIP submittal with such a project if it would do so. Similarly, EPA would retain the power, in the very unlikely event that a project in an RFP submitted by a State did interfere with the ability to attain the NAAQS, to deny the SIP revision. Thus, the proposed revision would add much-needed flexibility to the demonstration of attainment without threatening the timely attainment or maintenance of the NAAQS. The proposed flexibility will be especially important during the implementation of the new NAAQS for eight-hour ozone.

We also recommend adding an additional criterion for areas that are awaiting approvals of RFP, attainment or maintenance plans, but have received approvals for other elements of the applicable SIP (such as revised NSR requirements). Under the current and proposed regulations, conformity can be shown in nonattainment or maintenance areas in which an air agency (1) determines that emissions from an action are within the budget of an approved SIP or (2) such emissions would exceed the budget in an approved SIP, but for which the air agency would commit to filing a SIP revision that would result in total emissions that fit within the applicable budget. Falling between the cracks are areas that have submitted RFP, attainment or maintenance budgets that demonstrate that a federally sponsored project is consistent with the SIP, and are awaiting approvals of such budgets. It makes no sense that areas that clearly would exceed emissions budgets would be able to allow federal projects to proceed, while areas that show attainment with the projects would not. Additionally, no requirement in the Clean Air Act would dictate such a result.

We recommend that EPA add a criterion for conformity that would allow a conformity determination when the following requirements are met:

- EPA has approved any revision to the applicable implementation plan, including approvals to NSR or other provisions that implement the relevant ambient standard;
- The State has submitted an RFP, attainment or maintenance plan and EPA has found the plan complete;
- The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency responsible for the SIP to result in a

level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed emissions budgets specified in the SIP submittal deemed complete; and

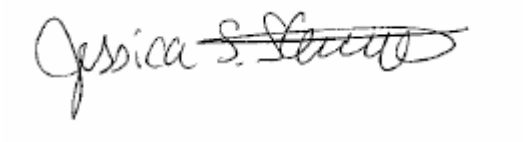
- The State commits that, in the event that EPA were to disapprove the submitted attainment or maintenance plan with the emissions budget, it would resubmit the attainment or maintenance plan with measures to ensure total emissions within the nonattainment or maintenance area – including the federal project – would allow attainment and/or maintenance with the relevant ambient standard.

9. Other Provisions We Support:

- Emissions accounting for projects in multiple airsheds (nonattainment or maintenance areas). While we support this provision, we do not believe that the text is clear. Implied are situations where a federal action would occur outside an attainment area but have an emissions effect inside an adjacent non-attainment/maintenance area. It is our belief that the new provisions would not require a conformity determination for those situations.
- Eliminating the regionally significant test. We support the removal of the regionally-significant conformity test, which creates unnecessary documentation burdens, without providing any real-world benefit.
- Presumed to conform actions and lists. ACI-NA appreciates the inclusion of presumed to conform actions and lists, and encourages their use.
- Stationary source permit exemptions.
- Exempting air traffic changes at or above 3,000 feet above ground level.

Thank you for your consideration of these comments. Please contact me at 202-861-8092 or jsteinhilber@aci-na.org with any questions.

Sincerely,



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