

BUREAU OF LAND MANAGEMENT FACT SHEET

AIR QUALITY GENERAL CONFORMITY RULE

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Introduction

The U.S. Environmental Protection Agency (EPA), in conjunction with the U.S. Department of Transportation (DOT), established the General Conformity Rule on November 30, 1993. The rule implements the Clean Air Act (CAA) conformity provision, which mandates that the federal government not engage, support, provide financial assistance for licensing, permitting, or approve any activity not conforming to an approved CAA implementation plan.

The General Conformity Rule, sometimes referred to as the Air Conformity Rule or Air Conformity, applies to all federal actions except programs and projects requiring funding or approval from the DOT, the Federal Highway Administration (FHWA), the Federal Transit Administration, or the Metropolitan Planning Organization (MPO). These types of programs and projects must instead comply with the conformity provisions implemented in the Transportation Conformity Rule issued by the DOT on November 24, 1993.

This fact sheet provides an overview of the General Conformity Rule codified at Title 40 Code of Federal Regulations (CFR) Part 51, Subpart W, and Title 40 CFR Part 93, "Determining Conformity of Federal Actions to State or Federal Implementation Plans."

What is Conformity?

Title I, Section 176, "Limitation on Certain Federal Assistance," of the CAA defines conformity as the upholding of a set of air quality goals by eliminating or reducing violations of the National Ambient Air Quality Standards (NAAQS) and achieving attainment of these standards. Conforming activities or actions should not, through additional air pollutant emissions, result in the following:

- Cause or contribute to new violations.
- Increase the frequency or severity of existing violations.
- Delay timely attainment or interim emission reductions.

The General Conformity Rule establishes conformity as a coordination process in which the economical, environmental, and social aspects of transportation and air quality planning are considered. The rule takes into account air pollution emissions associated with actions that are federally funded, licensed, permitted, or approved, and ensures emissions do not contribute to air quality degradation, thus preventing the achievement of state and federal air quality goals. In short, air conformity refers to the process of evaluating plans, programs, and projects to determine and demonstrate they meet the requirements of the CAA and an applicable implementation plan.

The General Conformity Rule divides the air conformity process into two distinct areas, applicability and determination; both are discussed in detail below. Federal agencies must initially assess if an action is subject to the Conformity Rule (Applicability Analysis) and then if the action conforms to an applicable implementation plan (Conformity Determination).

Terminology

To fully comprehend the conformity process, an understanding of the language specific to the CAA and General Conformity Rule is necessary. The following is a list of CAA and Air Conformity terms and definitions, which are used throughout the remainder of this fact sheet.

CAA

National Ambient Air Quality Standards (NAAQS) - Uniform air quality goals established by the EPA. The EPA designated two types of national air quality standards, primary which provides public health protection and secondary which provides public welfare protection.

Criteria Pollutants - Six common air pollutants: sulfur dioxide (SO₂), nitrogen oxides (NO_x), carbon monoxide (CO), particulate matter (PM₁₀ & PM_{2.5}), ground-level ozone (O₃), and lead (Pb), designated by the EPA for which primary and secondary NAAQS have been established.

State Implementation Plan (SIP) - Section 110 of the CAA requires each state to adopt and submit to the EPA an implementation plan that provides for the implementation, maintenance, and enforcement of NAAQS in each Air Quality Control Region.

Federal Implementation Plan (FIP) - A federally implemented plan used by the EPA to ensure air quality is maintained and enforced in accordance with established NAAQS. This plan is used when a state's SIP is found unacceptable.

Attainment Area - A geographic area that meets the primary NAAQS established by the EPA.

Note: An area may meet the established NAAQS for one criteria pollutant, but have unacceptable levels for another. An area could be in attainment for one criteria pollutant and simultaneously in nonattainment for another.

Nonattainment Area – A geographic area that does not meet the primary NAAQS limits established by the EPA to protect public health and the environment.

Note: The EPA establishes time limits for nonattainment areas to achieve specified air quality goals and may further designate nonattainment areas as extreme, severe, serious, moderate, or marginal.

Maintenance Area - Geographic area previously designated nonattainment and subsequently redesignated to attainment, for a probationary period, due to achieving the NAAQS.

Air Conformity

Federal Action - Any action engaged in by the federal government, or any activity that a department, agency, or instrumentality of the federal government supports by providing financial assistance, licenses, permits, or approval in any way.

Direct Emissions - Emissions of a criteria pollutant or its precursor caused by a federal action which occurs at the same time/place of the action.

Indirect Emissions - Emissions of a criteria pollutant or its precursor caused by a federal action, but may occur later in time and/or may be removed in distance from the action, but are still reasonably foreseeable.

Reasonably Foreseeable Emissions - The future projected indirect emissions that have a known location and are quantifiable at the time of the conformity determination.

De Minimis Emissions - The total direct and indirect emissions of a criteria pollutant caused by a federal action in a nonattainment or maintenance area in less than specified rates.

Note: Specified rates for criteria pollutants in nonattainment and maintenance areas are located in Title 40 CFR Part 93.153(b)(1) and (2).

Emission Budget - Portions of an applicable implementation plan that projects emission inventories describing the levels of emissions (mobile, stationary, or area) and provides for meeting set air quality goals for any criteria pollutant or its precursor, such as volatile organic compounds (VOCs).

The definitions found here are paraphrased, and should only be used as a reference. The precise, legal definitions can be found in the Clean Air Act (CAA), 42 United States Code (U.S.C.) 7401, et seq., Title 40 CFR Part 51, Subpart T, and Title 40 CFR Part 93.

Applicability Analysis

The applicability analysis process requires federal agencies to identify, analyze, and quantify emission impacts of an action. It is required for any action that is federally funded, licensed, permitted, or approved where the total direct and indirect emissions for criteria pollutants in a nonattainment or maintenance area exceed rates specified in Title 40 CFR 93.153(b)(1) and (2). Figure 1 depicts the applicability analysis process, the key portions of which are discussed below.

Exempt Actions

The initial step after defining the federal action and its location is to determine if the action is exempt from a conformity determination. If a federal action takes place in a nonattainment or maintenance area and meets any of the following criteria, then the action may be classified as exempt:

- The total direct and indirect emissions for criteria pollutants are less than the specified rates.

- Emissions will not increase, or an increase in emissions is clearly *de minimis*. Examples of common exempt Bureau of Land Management (BLM) actions are routine maintenance and repair of buildings, sites, roads, and the granting of leases. The EPA provides a list of actions deemed as clearly *de minimis* in Title 40 CFR 93.153(c)(2).
- Emissions are not reasonably foreseeable.
- The action is implementing a decision to conduct a conforming program. For example, prescribed burning actions that are consistent with a conforming land management plan.

Aside from a federal action meeting one of the above exemption criteria, a conformity determination is not required for the following:

- The portion of an action that requires a permit under the New Source Review (NSR) program or Operating Permit Program, Title V.
- Actions in response to emergencies or natural disasters that are commenced within hours or days after the emergency. However, if a federal action, as part of a continuing emergency response action, takes place after a 6 month period, the agency must make a written determination that it is impractical to prepare a conformity analysis and the action cannot be delayed due to public health and welfare concerns.
- Research, investigations, studies, demonstrations, or training where no environmental impact is incurred and/or the particular action furthers air quality research.
- The addition of new, or the alteration of existing, structures required by new or existing environmental regulations.
- The direct emissions from remedial/removal actions carried out under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Actions Presumed to Conform

Under this provision of the General Conformity Rule, a federal agency may establish a list of actions presumed to conform. If an agency develops such a list, a conformity determination does not have to be conducted as long as the federal agency can clearly demonstrate that the total direct and indirect emissions from the action will not:

- Cause or contribute to any new violations of any standard.
- Interfere with any provision in the applicable implementation plan.
- Increase the frequency or severity of existing violations.
- Delay timely attainment or interim emission reductions.

In addition, a federal agency must be able to document that the total direct and indirect emissions from such future actions would be below the specified emission rates for conformity determinations in nonattainment and maintenance areas.

Emission Calculations

Emission identification, analysis, and quantification are the foundation of any air quality conformity study. Studies should be based on emission calculations and not rough estimates that

utilize the methods and factors found in "Compilation of Air Pollutant Emission Factors, AP-42," Office of Air Quality Planning and Standards, Environmental Protection Agency (EPA).

The following activities are common BLM management actions that may require a conformity analysis:

- Energy development projects and activities.
- Mining.
- Recreational Activities.
- Construction Operations, such as pipelines and transmission lines.
- Wide-scale restoration, pesticide applications, and grazing activities.

The BLM process for collecting and calculating emissions information for an action's conformity determination differs by state, and district and field offices. This process is performed in-house or by contractors. The tools used to perform emissions inventories are also varied and based on industry standard approaches for utilizing appropriate emissions factors and equations (EPA-AP-42, NSPS, WRI, GlyCalc, E&P Tanks, etc.). If an emission analysis indicates pollutants will be released above the specified rates, then a conformity determination is required.

Conformity Determinations

Once it is demonstrated that the General Conformity Rule is applicable to an action, the agency must determine if the action conforms to an applicable implementation plan. Figure 2 outlines the conformity determination process, the key provisions of which are discussed below.

To properly conduct a conformity determination, the decision must be based on the latest:

- Emission estimation techniques taking into account mobile sources (automobile, truck, or aircraft), stationary sources (a building, structure, or equipment which may emit any regulated air pollutants), and area source emissions (a facility or installation as a whole which may emit regulated air pollutants).
- Applicable air quality modeling software and databases.
- Total direct and indirect emissions from the action, which must reflect emission scenarios expected to occur.

Methods for Determining Conformity

An action cannot conform unless the total direct and indirect emissions for criteria pollutants from the action are in compliance with all relevant requirements contained in the applicable implementation plan. The EPA provides several methods to determine if an action conforms to an implementation plan including a State Emission Budget, Emission Offsets, and/or Air Quality Modeling. A federal agency can use one or any combination of the methods, described below, to demonstrate conformity.

State Emission Budget - The total direct and indirect emissions from the federal action specifically identified and accounted for in the implementation plan. Emission budgets are the simplest method available to show conformity. However, to ensure the applicable implementation plan allots emission growth for BLM managed lands, the air resource manager has to be vigilant and work with state and local air quality agencies to incorporate emission growth allotments.

Offset Emissions - The total direct and indirect emissions for criteria pollutants from the action are fully offset within the same nonattainment or maintenance area so there is not a net increase in the emissions of the pollutant. Offset emissions are emission reductions that are quantifiable, consistent with the applicable implementation plan attainment and reasonable further progress demonstrations, surplus to required reductions, and enforceable. Since offsetting emissions within the same area must indicate there is not a net increase, emissions from the action cannot simply be offset to the specified rates (*de minimis* levels). Further, offsetting emissions must meet the same requirements used for permitting purposes.

Air Quality Modeling - Modeling is the most difficult and complex conformity method available. Applicable air quality models are specified by the EPA and may be used to conduct modeling locally or within an area. Regardless of which model is utilized, local and/or area, air quality modeling must show that the action does not:

- Cause or contribute to new violations.
- Increase the frequency or severity of any existing violations.

In addition to these methods, EPA has identified other ways of determining conformity with an implementation plan. These include:

- The action fully offsets its emissions within the same nonattainment or maintenance area through a revision of the implementation plan or an equally enforceable measure so there is not a net increase in emissions of the pollutant.
- The EPA has not approved a revision of the implementation plan since 1990, the total direct and indirect emissions from the action for future years does not increase emissions with respect to a baseline, which reflects the historical activity levels in the geographic area affected. The rule allows the use of a baseline established in 1990 or the year that was the basis for the area being designated as nonattainment or maintenance.
- The EPA has approved a state's revision to an area's attainment or maintenance demonstration after 1990. The state, in coordination with the federal agency, makes the following determination or commitment.

Determination - The state air quality agency determines and documents that the total direct and indirect emissions from the action, with all other emissions in the nonattainment or maintenance area, are at a level that would not exceed the specified emissions budget.

Commitment - The state air quality agency may commit in writing to the EPA, for any action in which the total direct and indirect emissions would exceed the emission budget of the applicable implementation plan:

- A specific schedule for adoption of a revised implementation plan which would achieve the necessary emission reductions prior to the action;
- Identification of specific measures for incorporation into the implementation plan which would result in a level of emissions, together with all other emissions in the nonattainment or maintenance area that would not exceed any specified emissions budget.
- Demonstrate all existing applicable implementation plan requirements are being implemented and that local authority to implement additional requirements has been fully pursued.
- A determination that all reasonable mitigation measures were implemented.
- Documentation of all air quality analyses supporting the conformity determination.

Reporting and Public Participation Requirements

When a draft conformity determination is made, the federal agency must give a 30-day notification and provide the draft document to the EPA region, state and local air quality agencies, and any affected federal land managers. The federal agency is also required to make the draft conformity determination with supporting documentation, describing the methods and conclusions used in conducting the applicability analysis, available to the public for a 30-day review period.

Any comments received during the public comment period, as well as any federal agency responses must be made available to the public upon request. Also, within 30 days after the final conformity determination is made, the federal agency must notify the public, EPA Region, state and local air quality agencies, and any affected federal land manager.

Note: Going public, or notifying the public, in this instance does not refer to publishing in the *Federal Register*. Federal agencies may satisfy the public notice requirement by placing an advertisement in a daily newspaper in the area affected by the action.

The conformity status of a federal action lapses 5 years from the date of the final conformity determination. Continuous federal actions do not have to be re-determined if the action is still within the scope of the final conformity determination. However, a new conformity determination is required if a federal action is altered causing an increase of the total direct and indirect emissions of the action.

Mitigation

In order to demonstrate conformity, a federal agency may require mitigation of air quality impacts for the proposed action. Mitigation measures are specified conditions within the conformity determination that decrease the total direct and indirect emissions from the action in order to achieve a positive conformity determination. However, if all available mitigation measures are implemented and the proposed action still does not meet conformity requirements, the action cannot be approved and may have to be modified further to achieve a positive conformity determination.

Despite the type of mitigation measure intended to mitigate impacts, the measures must be identified and the federal agency must include an implementation schedule with enforcement measures in the conformity determination. Also, prior to determining conformity, the federal agency must obtain written commitments from the individuals implementing the mitigation measures.

Interaction with NEPA

The conformity analysis may be integrated with the National Environmental Policy Act (NEPA) process. The General Conformity Rule allows for this integration. However, the extent of integration depends on the individual situation, and is ultimately determined by the federal agency. When the two are integrated, it is recommended the conformity applicability analysis and determination be recorded as appendices in the NEPA document.

The two processes may be integrated for efficiency and convenience such as a combined public comment period and notification requirements. However, there are certain requirements of NEPA which are not required under the conformity rule, such as the development of alternative actions. Also, federal actions which are categorically excluded (CATEXs) under NEPA are not automatically excluded from the conformity rule; and a conformity determination only has to be conducted on the preferred alternative that is selected for the Record of Decision.

Summary

The General Conformity Rule is the enactment of the conformity provision established in the CAA requiring federal agencies to demonstrate that federal actions undertaken within a designated non-attainment area will not:

- Cause or contribute to new violations.
- Increase the frequency or severity of existing violations.
- Delay timely attainment or interim emission reductions.

A conformity study must be completed prior to authorizing or commencing any action or activity that is federally funded, licensed, permitted, or approved. If a conformity study (i.e. analysis or determination) indicates the proposed action will not conform to an applicable implementation plan, the action cannot be authorized or approved.

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References

1. Clean Air Act, Title I, Section 176, "Limitations on Certain Federal Assistance."
2. Title 40 CFR Part 93, "Determining Conformity of Federal Actions to State and Federal Implementation Plans."
3. *Federal Register*, Volume 64, Number 229, 30 November 1993.
4. "Air Conformity Training Course," Power Point Presentation, March Air Reserve Base, California, 16-19 August 1999.
5. "U.S. Air Conformity Guide," August 1995, Headquarters U.S. Air Force (HQ USAF/CEV).

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6. Transportation Air Quality Center (TRAQ), Office of Mobile Sources, Office of Air and Radiation, U.S. EPA at <http://www.epa.gov/otaq/transp/traqconf.htm>.
 7. Instruction Memorandum No. 2012, "Guidance for Conducting Air Quality General Conformity Determinations," U.S. Department of Interior, Bureau of Land Management.¹

Figure 1: Applicability Analysis

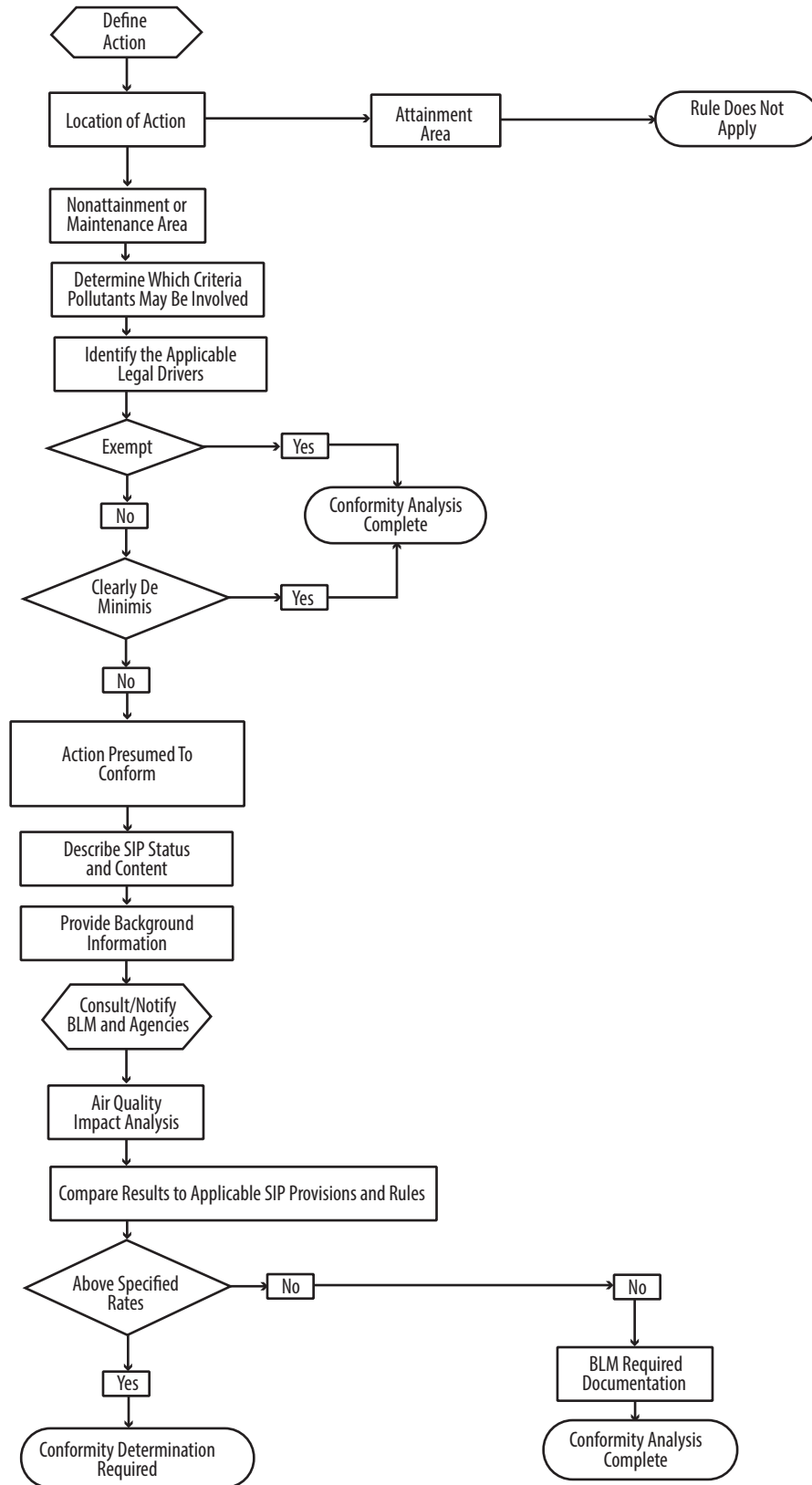


Figure 2: Conformity Determination

