

**§ 93.154**

**40 CFR Ch. I (7-1-04 Edition)**

any area including, where applicable, emission levels specified in the applicable SIP for purposes of:

(A) A demonstration of reasonable further progress;

(B) A demonstration of attainment; or

(C) A maintenance plan; or

(2) The Federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (b) of this section, based, for example, on similar actions taken over recent years.

(h) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (g)(1) or (g)(2) of this section, the following procedures must also be complied with to presume that activities will conform:

(1) The Federal agency must identify through publication in the FEDERAL REGISTER its list of proposed activities that are presumed to conform and the basis for the presumptions;

(2) The Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, the agency designated under section 174 of the Act and the MPO and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

(3) The Federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(4) The Federal agency must publish the final list of such activities in the FEDERAL REGISTER.

(i) Notwithstanding the other requirements of this subpart, when the total of direct and indirect emissions of any pollutant from a Federal action does not equal or exceed the rates specified in paragraph (b) of this section, but represents 10 percent or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of § 93.150 and §§ 93.155 through 93.160 shall apply for the Federal action.

(j) Where an action otherwise presumed to conform under paragraph (f) of this section is a regionally significant action or does not in fact meet one of the criteria in paragraph (g)(1) of this section, that action shall not be presumed to conform and the requirements of § 93.150 and §§ 93.155 through 93.160 shall apply for the Federal action.

(k) The provisions of this subpart shall apply in all nonattainment and maintenance areas.

**§ 93.154 Conformity analysis.**

Any Federal department, agency, or instrumentality of the Federal government taking an action subject to this subpart must make its own conformity determination consistent with the requirements of this subpart. In making its conformity determination, a Federal agency must consider comments from any interested parties. Where multiple Federal agencies have jurisdiction for various aspects of a project, a Federal agency may choose to adopt the analysis of another Federal agency or develop its own analysis in order to make its conformity determination.

**§ 93.155 Reporting requirements.**

(a) A Federal agency making a conformity determination under § 93.158 must provide to the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the Act and the MPO a 30 day notice which describes the proposed action and the Federal agency's draft conformity determination on the action.

(b) A Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the Clean Air Act and the MPO within 30 days after making a final conformity determination under § 93.158.

**§ 93.156 Public participation.**

(a) Upon request by any person regarding a specific Federal action, a Federal agency must make available for review its draft conformity determination under § 93.158 with supporting

materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.

(b) A Federal agency must make public its draft conformity determination under § 93.158 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

(c) A Federal agency must document its response to all the comments received on its draft conformity determination under § 93.158 and make the comments and responses available, upon request by any person regarding a specific Federal action, within 30 days of the final conformity determination.

(d) A Federal agency must make public its final conformity determination under § 93.158 for a Federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination.

**§ 93.157 Frequency of conformity determinations.**

(a) The conformity status of a Federal action automatically lapses 5 years from the date a final conformity determination is reported under § 93.155, unless the Federal action has been completed or a continuous program has been commenced to implement that Federal action within a reasonable time.

(b) Ongoing Federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as such activities are within the scope of the final conformity determination reported under § 93.155.

(c) If, after the conformity determination is made, the Federal action is changed so that there is an increase in the total of direct and indirect emissions, above the levels in § 93.153(b), a new conformity determination is required.

**§ 93.158 Criteria for determining conformity of general Federal actions.**

(a) An action required under § 93.153 to have a conformity determination for a specific pollutant, will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in § 93.153(b), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (c) of this section, and meets any of the following requirements:

(1) For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration;

(2) For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a similarly enforceable measure that effects emission reductions so that there is no net increase in emissions of that pollutant;

(3) For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements:

(i) Specified in paragraph (b) of this section, based on areawide air quality modeling analysis and local air quality modeling analysis; or

(ii) Meet the requirements of paragraph (a)(5) of this section and, for local air quality modeling analysis, the requirement of paragraph (b) of this section;

(4) For CO or PM-10—

(i) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on local air quality modeling analysis; or

(ii) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action