



Formal Conformity Determinations

Managing Risk in 2007 and Beyond

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General Conformity Rule

- **Applicability**
 - Nonattainment and maintenance areas
 - Exempt (*de minimis*) activities – no emissions
 - Applicability thresholds
 - Records of non-applicability (RONA)
- **Formal conformity demonstrations**
 - Included in the State Implementation Plan (SIP) budget
 - Fully offset the emissions
 - Letter of committal – state to EPA
 - Local and regional modeling

NEPA and General Conformity

- Document
 - CATEX/REC vs. EA vs. EIS
 - Segmentation
 - Appendixes
 - Record of Decision (ROD)
- Analysis
 - Affected Environment
 - Environmental Consequences – Scope of analysis
- Process
 - Applicable Laws and Regulations

EIS

- Notice of Intent (NOI)
- Notice of Availability (NOA)
- Draft EIS
- Invite comment for both Draft GCD and Draft EIS
- 45 Day Review Period

GCD

- NOI Not Required
- NOA should mention availability of GCD will begin comment period
- Draft GCD
- 30 Day Review Period

Public Participation Process

General Conformity Revisions

Revisions on the Way – They Really Are!

- Regulations promulgated in Nov. 1993
- Need adjusting and streamlining
- Identified 20 plus issues to be reviewed
- Proposal May 2007
- Final expected within a year of proposal

EPA Identified Issues For Revision

- Emission Budget Approach
- Construction Emissions
- Early Emission Reduction Credits
- Grandfathering Provisions in the Existing Regulations
- Application of the Grace Period for New Designations
- Harmonizing Horizon Years
- Inter-Precursor Offsets
- Actions Affecting Multiple Nonattainment/Maintenance Areas
- Geographical Limits for Offsets
- Regional Significance Test
- Offsite Mobile Source Emissions
- Clarification of General Conformity Determination Process
- Minor Source NSR Permits
- Protection of Classified Materials
- Response to Emergency Episodes
- Definition of Terms
- Wildland Fire Policy
- SIP Submittal Timing
- Mitigation Timing
- Presume to Conform
- Combining Projects for NEPA Analysis
- Definition of “reasonably foreseeable”

Better Definitions

- Applicability analysis
- Emission inventory
- Conformity determination
- Exempt actions
- Conformity evaluation
- Offsets
- Emission budget
- Mitigation measure
- Indirect Emissions
- Presumed to conform
- Reasonably foreseeable emissions

Emission Budget Approach

- Concept
 - Fed facility and states develop budget
 - States use the budget for the SIP
 - Fed facility within budget are “presumed to conform”
- Requires upfront work
 - Save on conformity evaluation
- Emissions identified in SIP

Current Methods for Demonstrating Conformity

- Having project emissions in the SIP
 - Accounted for specifically
 - State determines that project emissions are covered (e.g., part of a conforming Transportation plan)
 - State agrees to include new emissions (18-month SIP call)
- Emissions are below de minimis thresholds
- Emissions are offset or mitigated
- Modeling demonstration that emissions (except O₃, PM_{2.5} and NO₂) do not violate the NAAQS

New Proposal for Demonstrating Conformity: Emissions Budget

- Federal and State agencies may adopt a “facility-wide” (i.e., airport, DoD base or station) emissions budget
 - Flexibility to negotiate budget years and other terms with State
- State accounts for the emissions budget in the SIP
- With a budget for facility emissions, all actions are presumed to conform, thereby eliminating standard conformity evaluation requirements
- Not prohibited by existing reg’s -- Some states and facilities already have facility-wide budgets

Construction Emissions

- Still considered “direct” project emissions
 - Many Federal actions may involve large or long-term construction projects that States may not know about
- Public Comments Invited on Construction Emission Alternatives:
 - Exempting:
 - Altogether (like Transportation Conformity)
 - For short-term projects, if there is a commitment to substantial long-term reductions (e.g., like a loan with interest)
 - In lower classification areas
 - For “clean” equipment
 - Or, as part of:
 - A facility-wide emissions budget
 - An agency presumed to conform list

General Conformity Guidance

- 9/25/02 Q's & A's document
 - Responded to many questions
- Future guidance after rule revisions
- www.epa.gov/air/genconform/background.htm