

Information Brief

April 20, 2010

Topic: Environmental Protection Agency (EPA) publication of the Final Rule for Revisions to the General Conformity Regulations Relating to the Clean Air Act, Effective July 6, 2010.

Background: The Clean Air Act (CAA) (1990 revisions) requires Federal actions to conform to State, Tribal, or Federal implementation plans (SIP, TIP, or FIP) for attaining clean air. This section of the Clean Air Act has been referenced as the conformity provision. The EPA published its original regulations implementing this provision under the title of General Conformity in 1993. Conformity requirements apply to EPA designated planning areas that have been determined to be in nonattainment of certain levels of identified pollutants (criteria pollutants) and for which an Implementation Plan has been written (generally a State Implementation Plan (SIP)). A SIP is approved by the EPA which identifies and quantifies sources of emissions and presents a comprehensive strategy to control and reduce locally generated emissions. It also includes an attainment demonstration which shows that the proposed combination of existing sources and proposed actions will result in meeting air quality attainment by prescribed deadlines. If a federal action causes emissions and occurs within a nonattainment area or maintenance area, it is subject to the General Conformity regulations and must be determined by the action agency to conform to the applicable SIP before the action can be authorized. The EPA has issued a revision to the General Conformity Rules that address addresses implementation issues experienced since 1993. It provides for update of SIPs for specific pollutants, provides a mechanism for a federal agency to identify actions that are “presumed to conform” with SIPs, and facilitates federal compliance with SIPs and thus preventing violations of National Ambient Air Quality Standards (NAAQS).

Impacts to BLM Field Offices: Air quality concerns are increasing across the state and BLM authorized actions may be affecting air quality and there is tremendous uncertainty in many field offices on how to proceed. With the regulations, third parties who may contest a BLM decision can use the CAA and implementing regulations to challenge administrative process. Implementation and compliance with the CAA regulations is currently variable across BLM field units, ranging from non-compliance to full compliance. Failure to include analysis of air quality impacts in NEPA and, where necessary, conformity analyses, increases litigation risk for BLM decisions. Based on mapping of NAAQS, almost every BLM field office has lands in a planning area that is nonattainment for some criteria pollutant.

Proposed Action: The CASO is proposing to issue an IB to clarify statutory and regulatory obligations, and processes to follow, consistent with existing policy in BLM manual 7300 and with this revised July 6, 2010 final rule. The BLM Washington Office is not planning on immediately issuing any updated guidance for Air Quality Management based on this final rule, but because air quality is quickly becoming a significant issue for BLM, the need to convey operating requirements to field offices is urgent.

Additional Information: There are 15 air basins in California, and many of these may be broken down into further planning areas for specific pollutants. Planning areas, and their SIPs, can be found on the State’s Air Quality website at:

[<http://www.arb.ca.gov/ei/maps/statemap/abmap.htm>]. Table 1 identifies all air basins in California. At the present time there are seven federal criteria pollutants that are of concern: sulfur dioxide (SO₂), nitrogen dioxide (NO₂ or NO_x), lead (Pb), carbon monoxide (CO) ozone (O₃) and two fine particulates (PM₁₀ and PM_{2.5}). The status of each planning area for each of these

pollutants may be classified as attainment, nonattainment, maintenance, or unclassified. The boundaries of the planning areas are many times different for each pollutant.

The regulations provide a three phased process for meeting the General Conformity requirements of the CAA. These are: 1) Applicability Analysis, 2) Conformity Determination, and 3) Review Process. The regulations recognize that the vast majority of Federal actions do not result in a significant increase in emissions, and therefore, include a number of exemptions such as de minimis emission levels based on the type and severity of the nonattainment problem. 40 CFR 93.153 lists the 21 types of actions that are exempt from a conformity determination and are identified in Table 2. For actions that are not exempt, Tables 3 and 4 show emission threshold rates for the various pollutants for nonattainment and maintenance basins. Note that most BLM actions will either be exempt, or meet de minimis levels. Regardless, an Applicability Analysis is required to document exemptions or emissions lower than de minimis thresholds. If, through the Applicability Analysis, rates for criteria pollutants are calculated to exceed de minimis levels by the proposed federal action, a Conformity Determination must be completed.

For the BLM, a general Conformity Determination can be completed as part of a National Environmental Policy Act (NEPA) document. Air quality is a required element of an Environmental Assessment (EA) or Environmental Impact Statement (EIS), and these documents must recognize federal nonattainment areas. Because the SIP is the basis for conformity, it will identify provisions, application of control measures, and modeling to show that the proposed actions emissions are within the budget established for the planning area. The final rule provides a step-by-step process for documenting conformity.

Conformity determinations must occur through a public review process. To do so, the regulations require to federal agencies to provide notice of the draft determination to the applicable EPA Regional Office, the State and local air quality agencies, the Metropolitan Planning Organization (MPO) and where applicable, any federal land manager and federal recognized Indian tribes. The draft determination is subject to a 30 day comment period and the final determination must be made public. The final determination is subject to appeal.

The BLM training center (NTC), in concert with the Ridgecrest Field Office Air Quality Specialist Glenn Harris, has developed a ten step process to complete a conformity analysis. Information on this is found both in a power point presentation from the NTC, and in a Draft Ridgecrest Field Office Handbook. These documents, along with NEPA documents memorializing this analysis for various BLM actions can be found on Glenn's public share folders at:

<\\blm\dfs\ca\ri\pub\pubUsers\gharris\AirQuality>. In brief, the steps are:

1. Determine spatial and jurisdictional applicability
2. Describe the SIP status and content
3. Provide background information
4. Conduct an Air Quality impact analysis
5. Compare results to applicable SIP provisions and rules
6. Write a Conclusion Statement
7. If a conformity determination is necessary, complete this determination
8. Provide agency and public review of the draft determination
9. Submit for approval to the appropriate regulatory agencies
10. Archive these findings

Glenn's Handbook contains a more in-depth discussion on these analysis steps.

Table 1: Air Basins and Counties in California

California Air Basins and Counties	
AIR BASINS	COUNTIES
Great Basin Valleys	Alpine, Inyo, Mono
Lake County	Lake
Lake Tahoe	El Dorado, Placer
Mojave Desert	Kern, Los Angeles, San Bernardino, Riverside
Mountain Counties	Amador, Calaveras, El Dorado, Mariposa, Nevada, Placer, Plumas, Sierra, Tuolumne
North Central Coast	Monterey, San Benito, Santa Cruz
North Coast	Del Norte, Humboldt, Mendocino, Sonoma, Trinity
Northeast Plateau	Lassen, Modoc, Siskiyou
Sacramento Valley	Butte, Colusa, Glenn, Placer, Sacramento, Shasta, Solano, Sutter, Tehama, Yolo, Yuba
Salton Sea	Imperial, Riverside
San Diego	San Diego
San Francisco Bay Area	Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, Sonoma
San Joaquin Valley	Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare
South Central Coast	San Luis Obispo, Santa Barbara, Ventura
South Coast	Los Angeles, Orange, Riverside, San Bernardino

Table 2: Actions pertinent to BLM exempt from a Conformity Determination. For a full list of exemptions see 40 CFR 93.153

1	Actions where the total of direct and indirect emissions are below the emissions levels specified in Tables 3 and 4
2	Actions which would result in no emissions increase or an increase in emissions that is clearly de minimis, such as:
	(i) Judicial and legislative proceedings.
	(ii) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.
	(iii) Rulemaking and policy development and issuance.
	(iv) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.
	(v) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel.
	(vi) Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.
	(vii) The routine, recurring transportation of materiel and personnel.
	(ix) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.
	(x) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.
	(xi) The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted.
	(xii) Planning, studies, and provision of technical assistance.
	(xiii) Routine operation of facilities, mobile assets and equipment.
	(xiv) Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.
	(xix) Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of CERCLA, and where the Federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.
	(xx) Transfers of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity and assignments of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity for subsequent deeding to eligible applicants.
3	Actions where the emissions are not reasonably foreseeable, such as the following:
	(ii) Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.
4	Actions which implement a decision to conduct or carry out a conforming program such as prescribed burning actions which are consistent with a conforming land management plan.
5	Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (e) of this section.
6	Research, investigations, studies, demonstrations, or training (other than those exempted under paragraph (c)(2) of this section), where no environmental detriment is incurred and/or, the particular action furthers air quality research, as determined by the State agency primarily responsible for the applicable SIP;

Table 3: Criteria Pollutant Rates that Apply in Nonattainment areas

	Tons/year
Ozone (VOC's or NO _x):	
Serious NAA's	50
Severe NAA's	25
Extreme NAA's	10
Other ozone NAA's outside an ozone transport region	100
Other ozone NAA's inside an ozone transport region:	
VOC	50
NO _x	100
Carbon monoxide: All NAA's	100
SO ₂ or NO ₂ : All NAA's	100
PM-10:	
Moderate NAA's	100
Serious NAA's	70
PM _{2.5} :	
Direct emissions	100
SO ₂	100
NO _x (unless determined not to be a significant precursor)	100
VOC or ammonia (if determined to be significant precursors)	100
Pb: All NAA's	25

Table 4: Criteria Pollutant Rates that Apply in All Maintenance Areas

	Tons/year
Ozone (NO _x , SO ₂ or NO ₂):	
All Maintenance Areas	100
Ozone (VOC's):	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide: All Maintenance Areas	100
PM-10: All Maintenance Areas	100
PM _{2.5} :	
Direct emissions	100
SO ₂	100
NO _x (unless determined not to be a significant precursor)	100
VOC or ammonia (if determined to be significant precursors)	100
Pb: All Maintenance Areas	25