

REVISIONS TO THE STATE IMPLEMENTATION PLAN (SIP)
FOR THE DEMONSTRATION OF CONFORMITY REGARDING SIPS
FOR AREAS WHICH ARE IN NONATTAINMENT OR MAINTENANCE STATUS
REGARDING THE NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS)

GENERAL CONFORMITY SIP

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APPENDIX NAME

H-4-1

Federal Register Part II, U.S.
Environmental Protection Agency, 40
CFR Part 51, subpart W, Conformity
of General Federal Action to State
Implementation Plans.

A. - G. (No change.)

H. CONFORMITY WITH NAAQS

1. POLICY AND PURPOSE (Reserved.)
2. SUMMARY OF THE PRINCIPAL ELEMENTS ADDRESSED WITHIN THIS PLAN (Reserved.)
3. TRANSPORTATION CONFORMITY (No change.)
4. GENERAL CONFORMITY (New.)

a. Introduction

The Federal Clean Air Act Amendments (FCAA) of 1990 required the United States Environmental Protection Agency (EPA) to issue a State Implementation Plan (SIP) revision and a rule outlining the procedures and criteria for determining whether or not a federal action conforms to the SIP. The General Conformity rule does not apply to federal actions involving metropolitan transportation plans, transportation improvement programs, and projects funded by the Federal Highway Administration or the Federal Transit Administration. This rule applies in areas designated "non-attainment" or "maintenance" for any of the National Ambient Air Quality Standards (NAAQS). The NAAQS pollutants include ozone,

carbon monoxide (CO), sulfur dioxide (SO₂), nitrogen dioxide (NO₂), lead, and particulate matter with an aerodynamic diameter of less than or equal to ten micrometers (PM₁₀). This rule also applies to the precursors of these pollutants: volatile organic compounds (VOC) and oxides of nitrogen (NO_x) in ozone areas; NO_x in NO₂ areas; and VOC and NO_x in PM₁₀ areas. The EPA General Conformity rule (Appendix H-4-1) was adopted on November 30, 1993, and requires each state to adopt rules and make SIP revisions to implement general conformity no later than November 30, 1994. This rulemaking and SIP revision will implement the EPA General Conformity rules in Texas.

b. Background Information.

The General Conformity rule requires each federal agency to determine whether or not their proposed actions conform with the SIP. Federal actions include, for example, providing financial assistance, licensing, and permitting. The final EPA rule addresses the impacts of pollutant emissions which are caused by the federal action, which are above the de minimis levels or are regionally significant, which are reasonably foreseeable, and which can be controlled by the federal agency through its continuing program responsibility. By requiring federal actions to conform to the SIP, the general conformity rules assure that federal actions do not undermine the state's efforts to achieve clean air at least cost. Regarding federal actions, the rules

reinforce the state's decision-making ability by insuring the integrity of their planning decisions and the requirements specified in their SIP. The rules prohibit certain federal actions that would not conform to a SIP. Although the EPA rule only applies in areas designated "nonattainment" or "maintenance", EPA intends to publish a notice of proposed rulemaking in the near future which will apply the conformity requirements to attainment areas which are near nonattainment.

The EPA rule allows the state rule to be more stringent in some areas if the state rule applies to nonfederal as well as federal agencies within the state.¹ The Texas Natural Resource Conservation Commission (TNRCC) does not intend, at this time, to extend the federal de minimis level down to the major modification level for each nonattainment or maintenance area, and to also require nonfederal entities to comply with the general conformity rules. The TNRCC reserves the right to make the rule more stringent as it deems necessary.

¹ As currently written, the EPA rule defines de minimis as the major source emissions level for each specific nonattainment area, but does not define de minimis as the major modification emissions level. Below the de minimis level, the federal agency does not have to mitigate the anticipated emissions increase nor submit the conformity demonstration documentation to the state. For example, moderate ozone nonattainment areas have a major source level of 100 tons/year and a major modification level of 40 tons/year. This potential additional 60 tons/year of growth by each federal action would undermine emissions budget in a moderate nonattainment area. This unmitigated and unreported emissions growth is very important, especially when one considers that the emissions budget is a fixed emissions cap on the nonattainment or maintenance area which may not be changed for the entire maintenance period of 20 years.

c. Criteria and Procedures

The FCAA requires states to ensure that criteria and procedures for general conformity are enforceable by rule. The TNRCC 30 TAC §101.30 of the General Rules (SIP Section XIV, concerning Rules and Regulations) has been revised to include enforceable criteria and procedures for determining that federal actions in nonattainment and maintenance areas conform to the SIP. The TNRCC rule incorporates the relevant sections of the final EPA rule on general conformity with clarification language to adapt the rule to state policy and procedures.

5. SOCIAL AND ECONOMIC CONSIDERATIONS OF THE PLAN

(Reserved.)

6. FISCAL AND MANPOWER RESOURCES (New.)

a. Transportation Conformity (No change.)

b. General Conformity (New.)

There will not be fiscal implications anticipated for state government. The existing personnel who review the National Environmental Policy Act documents for the TNRCC will review the general conformity submittals. There are no revenues associated with this rule.

There will be significant fiscal implications anticipated for federal agencies as a result of implementing this new rule. Each general conformity action that exceeds the level of significance will require a documented general conformity determination. Cost estimates from actions completed in other states range from \$30,000 to \$250,000, depending upon the level of complexity of the action.

There will be minimal fiscal implications anticipated for local governments as a result of implementing this new rule.

There will be no fiscal implications anticipated for small business as a result of implementing this new rule.

7. HEARING REQUIREMENTS

- a. Public Hearings for Transportation Conformity SIP
(No change.)

b. Public Hearings for General Conformity SIP

Public hearings on this SIP revision were held in the following locations:

El Paso

August 31, 1994

10:00 a.m.

City of El Paso

Council Chambers

#2 Civic Center Plaza

2nd Floor

Irving

August 31, 1994

11:00 a.m.

Central Library Auditorium

801 West Irving Boulevard

Beaumont

September 1, 1994

6:00 p.m.

John Gray Institute

855 Florida Avenue

Houston

September 2, 1994

10:00 a.m.

Houston-Galveston Area Council

Conference Room A

3555 Timmons Lane