



Opportunity for Review and Comment on
Environmental Protection Agency
Proposed Clean Air Act Rule:
General Conformity Rule



Summary:

On January 8, 2008, the Environmental Protection Agency (EPA) issued a proposed rule (73 FR 1402; available at <http://www.hss.energy.gov/nuclearsafety/nsea/oepa/rules/73/73fr1402.pdf>), that revises the Clean Air Act requirement that Federal actions conform to the appropriate State, Tribal, or Federal implementation plan for attaining clean air. These regulations, codified at 40 C.F.R. 93 Subpart B, are commonly known as the general conformity rule.

The proposed revisions to the general conformity rule are summarized at pages 1404-1406 of the Federal Register Notice. Among the significant proposed changes to the rule are the following:

- A new section (40 C.F.R. 93.161) is proposed to allow for a facility-wide emission budget approach.
- A new section (40 C.F.R. 93.163) is proposed to allow alternate schedules for mitigating emissions increases.
- A new section (40 C.F.R. 93.164) is proposed to allow, with certain limitations, the emission of one precursor of a criteria pollutant to be mitigated or offset by the reduction in the emissions of another precursor of that pollutant.
- A new section (40 C.F.R. 93.165) is proposed to incorporate the use of early emission reduction credits.
- EPA proposes to delete the requirement in 40 C.F.R. 93.153(i) relating to regionally significant actions.
- EPA is proposing additional categories of actions that can be included in "presumed to conform" lists.
- EPA is seeking comment on the possibility of exempting short-term construction projects from the rule.

Importance to Department of Energy (DOE) Operations:

The general conformity rule is an important rule for DOE facilities located in Clean Air Act nonattainment and maintenance areas. In particular, 40 C.F.R. 93.150 provides that: (a) No department, agency or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan; and (b) A Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this Subpart before the action is taken.

DOE issued a guidance document covering the general conformity rule in April 2000, *Clean Air Act General Conformity Requirements and the National Environmental Policy Act*. The guidance document is available at <http://www.eh.doe.gov/nepa/tools/guidance/caaguidance.pdf>.

Solicitation of Review and Comments:

Please review the proposed rule and submit any comments by February 19, 2008, to Emile Boulos of the DOE Office of Environmental Policy and Assistance (emile.boulos@hq.doe.gov; 202-586-1306). In developing comments, please indicate the specific pages and section of the *Federal Register* notice to which each comment pertains. Questions concerning the rulemaking should be directed to Mr. Boulos.