

**§ 51.854**

**40 CFR Ch. I (7–1–10 Edition)**

with this subpart that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

- (i) Cause or contribute to any new violation of any standard in any area;
- (ii) Interfere with provisions in the applicable SIP for maintenance of any standard;
- (iii) Increase the frequency or severity of any existing violation of any standard in any area; or
- (iv) Delay timely attainment of any standard or any required interim emission reductions or other milestones in 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 § 51.850 and §§ 51.855 through 51.860 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 § 51.850 and §§ 51.855 through 51.860 shall apply for the Federal action.

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

[58 FR 63247, Nov. 30, 1993, as amended at 71 FR 17008, Apr. 5, 2006; 71 FR 40426, July 17, 2006]

EFFECTIVE DATE NOTE: At 75 FR 17272, Apr. 5, 2010, § 51.853 was removed and reserved, effective July 6, 2010.

**§ 51.854 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.

EFFECTIVE DATE NOTE: At 75 FR 17272, Apr. 5, 2010, § 51.854 was removed and reserved, effective July 6, 2010.