

3745-101-03      **Applicability, priority, and frequency of conformity determinations.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the last paragraph of rule 3745-101-02 of the Administrative Code titled "Incorporation by reference."]

- (A) Except as provided for in paragraph (F) of this rule or in 40 CFR 93.126, conformity determinations are required for:
- (1) The adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by an MPO or Ohio DOT;
  - (2) The adoption, acceptance, approval or support of TIPs and TIP amendments or the STIP developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by an MPO or Ohio DOT; and
  - (3) The approval, funding, or implementation of FHWA/FTA projects.
- (B) Conformity determinations are not required under this chapter for individual projects which are not FHWA/FTA projects. However, 40 CFR 93.121 applies to such projects if they are regionally significant.
- (C) The provisions of this chapter shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.
- (1) The provisions of this chapter apply with respect to emissions of the following criteria pollutants: ozone, CO, NO<sub>2</sub>, PM<sub>10</sub> and PM<sub>2.5</sub>.
  - (2) The provisions of this chapter also apply with respect to emissions of the following precursor pollutants:
    - (a) VOC and NO<sub>x</sub> in ozone areas;
    - (b) NO<sub>x</sub> in NO<sub>2</sub> areas;
    - (c) VOC and/or NO<sub>x</sub> in PM<sub>10</sub> areas if the USEPA regional administrator or the director has made a finding that transportation-related precursor emissions of one or both of these precursors within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and Ohio DOT, or if the applicable implementation plan, or implementation plan submission, establishes an approved or adequate

budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy;

- (d)  $\text{NO}_x$  in  $\text{PM}_{2.5}$  areas, unless both the USEPA regional administrator and the director have made a finding that transportation-related emissions of  $\text{NO}_x$  within the nonattainment area are not a significant contributor to the  $\text{PM}_{2.5}$  nonattainment problem and has so notified the MPO and Ohio DOT, or the applicable implementation plan, or implementation plan submission does not establish an approved or adequate budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy; and
  - (e) VOC,  $\text{SO}_x$  and/or  $\text{NH}_3$  in  $\text{PM}_{2.5}$  areas if either the USEPA regional administrator or the director has made a finding that transportation-related emissions of any of these precursors within the nonattainment area are a significant contributor to the  $\text{PM}_{2.5}$  nonattainment problem and has so notified the MPO and Ohio DOT, or if the applicable implementation plan, or implementation plan submission establishes an approved or adequate budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.
- (D) The provisions of this chapter apply to  $\text{PM}_{2.5}$  nonattainment and maintenance areas with respect to  $\text{PM}_{2.5}$  from re-entrained road dust if the USEPA regional administrator or the director has made a finding that re-entrained road dust emissions within the area are a significant contributor to the  $\text{PM}_{2.5}$  nonattainment problem and has so notified the MPO and Ohio DOT, or if the applicable implementation plan, or implementation plan submission includes re-entrained road dust in the approved or adequate budget as part of the reasonable further progress, attainment or maintenance strategy. Re-entrained road dust emissions are produced by travel on paved and unpaved roads including emissions from anti-skid and deicing materials.
- (E) The provisions of this chapter apply to maintenance areas for twenty years from the date USEPA approves the area's request under Section 107 (d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this chapter shall apply for more than twenty years.
- (F) The following limitations shall apply to conformity determinations:
- (1) Projects subject to this chapter for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the most recent four year period: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding,

final design, right-of-way acquisition, construction, or any combination of these phases.

- (2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the most recent four year period.
- (G) Grace period for new nonattainment areas. For areas or portions of areas which have been continuously designated attainment or not designated for any NAAQS for ozone, CO, PM<sub>10</sub>, PM<sub>2.5</sub> or NO<sub>2</sub> since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any NAAQS for any of these pollutants, the provisions of this chapter shall not apply with respect to that NAAQS for twelve months following the effective date of final designation to nonattainment of each NAAQS for such pollutant.
- (H) When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.
- (I) Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects shall be made according to the requirements of this rule and the applicable implementation plan.
- (J) Each new transportation plan shall be found to conform, before the transportation plan is approved by the MPO or accepted by USDOT.
- (1) All transportation plan revisions shall be found to conform before the transportation plan revisions are approved by MPO or accepted by USDOT, unless the revision merely adds or deletes exempt projects listed in 40 CFR 93.126 or 40 CFR 93.127 and has been made in accordance with the notification provisions of paragraph (C)(1)(f) of rule 3745-101-04 of the Administrative Code. The conformity determination shall be based on the transportation plan and the revision taken as a whole.
  - (2) In any case, conformity determinations shall be made no less frequently than every four years, or the existing conformity determination will lapse.
- (K)
- (1) A new TIP shall be demonstrated to conform, before the TIP is approved by the MPO and approved by the governor or his designee or accepted by USDOT.

- (2) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO and approved by the governor or his designee or accepted by USDOT, unless the amendment merely adds or deletes exempt projects listed in 40 CFR 93.126 or 40 CFR 93.127 and has been made in accordance with the notification provisions of paragraph (C)(1)(f) of rule 3745-101-04 of the Administrative Code.
  - (3) After an MPO adopts a new or revised transportation plan, conformity of the TIP shall be redetermined by the MPO and USDOT within six months, unless the new or revised plan merely adds or deletes exempt projects listed in 40 CFR 93.126 or 40 CFR 93.127 and has been made in accordance with the notification provisions of paragraph (C)(1)(f) of rule 3745-101-04 of the Administrative Code. Otherwise, the existing conformity determination for the TIP will lapse.
  - (4) In any case, conformity determinations shall be made no less frequently than every four years or the existing conformity determination will lapse.
- (L) FHWA/FTA projects shall be found to conform by the FHWA and FTA before they are adopted, accepted, approved, or funded. Conformity shall be redetermined for any FHWA/FTA project if one of the following occurs: a significant change in the project's design concept and scope; three years elapse since the most recent major step to advance the project; or initiation of a supplemental environmental document for air quality purposes. Major steps include: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; and, construction including federal approval of the plans, specifications and estimates.

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