

3745-102-05 **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 3745-102-02 of the Administrative Code titled "Incorporation by reference."]

(A) Frequency of conformity determinations.

- (1) The conformity status of a federal action automatically lapses five years from the date a final conformity determination is reported under paragraph (B) of rule 3745-102-04 of the Administrative Code, unless the federal action has been completed or a continuous program has been commenced to implement that federal action within a reasonable time.
- (2) Ongoing federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as the emissions associated with such activities are within the scope of the final conformity determination reported under paragraph (B) of rule 3745-102-04 of the Administrative Code.
- (3) If, after the conformity determination is made, the federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in paragraph (B) of rule 3745-102-03 of the Administrative Code, then a new conformity determination is required.

(B) Criteria for determining conformity of general federal actions.

- (1) The areawide and local air quality modeling analyses shall:
 - (a) Meet the requirements in paragraph (C) of this rule; and
 - (b) Show that the action does not:
 - (i) Cause or contribute to any new violation of any standard in any area; or
 - (ii) Increase the frequency or severity of any existing violation of any standard in any area.
- (2) Notwithstanding any other requirements of paragraph (B) of this rule, an action subject to this chapter shall not be determined to conform to the applicable implementation plan unless the total of direct and indirect emissions from the action is in compliance or is consistent with all relevant requirements and milestones contained in the applicable implementation plan, such as elements identified as part of the reasonable further progress schedules, assumptions

specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements, and such action is otherwise in compliance with all relevant requirements of the applicable implementation plan.

- (3) Any analyses required under paragraph (B) of this rule shall be completed, and any mitigation requirements necessary for a finding of conformity shall be identified in compliance with rule 3745-102-06 of the Administrative Code, before the determination of conformity is made.
- (4) An action required under rule 3745-102-03 of the Administrative Code to have a conformity determination for a specific pollutant will be determined to conform to the applicable implementation plan if, for each pollutant that exceeds the rates in paragraph (B) of rule 3745-102-03 of the Administrative Code or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (B)(2) of this rule and meets any of the following requirements:
 - (a) For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable implementation plan's attainment or maintenance demonstration;
 - (b) For ozone or NO₂, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable implementation plan or a measure similarly enforceable under state and federal law that effects emission reductions so that there is no net increase in emissions of that pollutant;
 - (c) For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements:
 - (i) Specified in paragraph (B)(1) of this rule, based on areawide air quality modeling analysis and local air quality modeling analysis; or
 - (ii) Specified in paragraph (B)(4)(e) of this rule and, for local air quality modeling analysis, the requirement of paragraph (B)(1) of this rule;
 - (d) For CO or PM₁₀:
 - (i) Where Ohio EPA determines, in accordance with paragraphs (B) and (C) of rule 3745-102-04 of the Administrative Code and consistent with the applicable implementation plan, that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (B)(1) of this rule, based on local air quality modeling analysis; or

- (ii) Where Ohio EPA determines, in accordance with paragraphs (B) and (C) of rule 3745-102-04 of the Administrative Code and consistent with the applicable implementation plan, that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (B)(1) of this rule, based on areawide modeling, or meet the requirements of paragraph (B)(4)(e) of this rule; or
- (e) For ozone or nitrogen dioxide, and for purposes of paragraphs (B)(4)(c)(ii) and (B)(4)(d)(ii) of this rule, each portion of the action or the action as a whole meets any of the following requirements:
- (i) Where USEPA has approved a revision to an area's attainment or maintenance demonstration after 1990 and the state makes a determination as provided in paragraph (B)(4)(e)(i)(a) of this rule or where the state makes a commitment as provided in paragraph (B)(4)(e)(i)(b) of this rule. Any such determination or commitment shall be made in compliance with paragraphs (B) and (C) of rule 3745-102-04 of the Administrative Code:
 - (a) The total of direct and indirect emissions from the action, or portion thereof, is determined and documented by Ohio EPA to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed the emissions budgets specified in the applicable implementation plan.
 - (b) The total of direct and indirect emissions from the action, or portion thereof, is determined by Ohio EPA to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would exceed an emissions budget specified in the applicable implementation plan and the governor or Ohio EPA makes a written commitment to USEPA which includes the following:
 - (i) A specific schedule for adoption and submittal of a revision to the applicable implementation plan which would achieve the needed emission reductions prior to the time that emissions from the federal action would occur;
 - (ii) Identification of specific measures for incorporation into the applicable implementation plan which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable implementation plan;

- (i) Calendar year 1990,
 - (ii) The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the year that is most representative in terms of the level of activity), if a classification is promulgated in 40 CFR Part 81; or
 - (iii) The year of the baseline inventory in the PM₁₀ applicable implementation plan;
- (b) The baseline emissions are the total of direct and indirect emissions calculated for the future years (described in paragraph (C)(4) of this rule) using the historic activity levels, which are described in paragraph (B)(4)(e)(iv)(a) of this rule, and appropriate emission factors for the future years; or
- (v) Where the action involves regional water or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable implementation plan, based on assumptions regarding per capita use that are developed or approved in accordance with paragraph (C)(1) of this rule.

(C) Procedures for conformity determinations of general federal actions.

- (1) The analyses required under this chapter shall be based on the latest planning assumptions.
 - (a) All planning assumptions shall be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO (including, but not limited to, assumptions regarding per capita water and sewer use, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, wood stoves per household, and the geographic distribution of population growth). The conformity determination shall also be based on the latest assumptions about current and future background concentrations and other federal actions.
 - (b) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, shall be approved by the MPO or other agency authorized to make such estimates for the area.
- (2) The analyses required under this chapter shall be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the USEPA regional administrator is obtained for any

modification or substitution, then they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program.

- (a) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by USEPA for use in the preparation or revision of implementation plans in the state or area shall be used for the conformity analysis as specified below:
 - (i) The USEPA publishes in the Federal Register a notice of availability of any new motor vehicle emissions model; and
 - (ii) A grace period of three months shall apply during which the motor vehicle emissions model previously specified by USEPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than three years before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model specified by USEPA, if a final determination as to conformity is made within three years of such analysis.
 - (b) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by USEPA in the "Compilation of Air Pollutant Emission Factors (AP-42)" shall be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.
- (3) The air quality modeling analyses required under this chapter shall be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models" contained in 40 CFR Part 51, Appendix W, unless:
 - (a) The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program; and
 - (b) Written approval of the USEPA regional administrator is obtained for any modification or substitution.
 - (4) The analyses required under this chapter shall be based on the total of direct and indirect emissions from the action and shall reflect emission scenarios that are expected to occur under each of the following cases:
 - (a) The CAA mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

- (b) The year during which the total of direct and indirect emissions from the action for each pollutant analyzed is expected to be the greatest on an annual basis; and
- (c) Any year for which the applicable implementation plan specifies an emissions budget.

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