

## **Chapter 3745-101 Transportation Conformity**

## **3745-101-02 Definitions.**

(A) Terms used but not defined in this chapter shall have the meaning given them by the CAAA, Titles 23 and 49 of the United States Code, other USEPA regulations, other USDOT regulations, or other state or local air quality or transportation rules, in that order of priority. Except as otherwise provided in this rule, the definitions in rule 3745-15-01 of the Administrative Code shall apply to this chapter.

(B) As used in Chapter 3745-101 of the Administrative Code:

(1) "Action scenario" means the future transportation system that would result from the implementation of the proposed transportation plan, program, and projects.

(2) "Applicable implementation plan" as defined in Section 302(q) of the CAAA means the portion, or portions, of the state's implementation plan, or most recent revision thereof, which has been approved under Section 110 of the CAAA, or promulgated under Section 110(c) of the CAAA, or promulgated or approved pursuant to regulations promulgated under Section 301(d) of the CAAA and which implements the relevant requirements of the CAAA.

(3) "Baseline scenario" means the transportation system that would result from the continued implementation of current programs, as specified in rule 3745-101-12 of the Administrative Code.

(4) "CAAA" means the Clean Air Act of 1990, 42 USC 7401 et seq. (1990) as amended.

(5) "Cause or contribute to a new violation" for a project means:

(a) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented, or

(b) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

(6) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC 9601 et seq., as amended.

(7) "Clean data" means air quality monitoring data determined by EPA to meet the requirements of 40 CFR Part 58 that indicate attainment of the national ambient air quality standard.

(8) "Consultation" means that one party confers with another identified party, provides all appropriate information to that party needed for meaningful input, and prior to taking any action, considers the views of that party and, except with respect to those actions for which only notification is required and those actions subject to paragraph (C)(1)(f) of rule 3745-101-04 of the Administrative Code, responds to those views in a timely, substantive written manner prior to any final decision on such action.

(9) "Control strategy implementation plan revision" means the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAAA requirements for demonstrations of reasonable further progress and attainment including implementation plan revisions submitted to satisfy 172(c), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A) of the CAAA; and Sections 192(a) and 192 (b) of the CAAA, for nitrogen dioxide.

(10) "Design concept" means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

(11) "Design scope" means the design aspects of a facility which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high occupancy vehicles, etc.

(12) "DOT" means the United States Department of Transportation

(13) "EMFAC" means a computer-based mathematical model used by the state of California to calculate motor vehicle emissions.

(14) "EPA" means the Environmental Protection Agency

(15) "Facility" means any building, structure, roadway, installation, operation, or combination thereof.

(16) "FHWA" means the Federal Highway Administration of USDOT.

(17) "FHWA/FTA project", for the purpose of this chapter, means any highway or transit project which is proposed to receive funding assistance and approval through the federal-aid highway program or the federal mass transit program or requires federal highway administration (FHWA) or federal transit administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

(18) "FTA" means the Federal Transit Administration of USDOT.

(19) "Fiscally constrained" means that full funding is reasonably anticipated to be available within the time period contemplated for completion of the projects in the transportation plan or in the transportation improvement plan in accordance with the metropolitan planning regulations at 23 CFR Part 450.

(20) "Forecast period" with respect to a transportation plan or TIP means the period covered by the transportation plan or TIP pursuant to 23 CFR Part 450.

(21) "Highway project" means an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it shall be defined sufficiently to:

(a) Connect logical termini and be of sufficient length to address environmental matters on a broad scale;

(b) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(c) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(22) "Horizon year" means a year for which the transportation plan or TIP describes the envisioned transportation system in accordance with rule 3745-101-05 of the Administrative Code.

(23) "Hot-spot analysis" means an estimation of likely future localized CO and PM<sub>10</sub> pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

(24) "HPMS" means highway performance monitoring system.

(25) "Incomplete data area" means any ozone nonattainment area which USEPA has classified, in 40 CFR Part 81, as an incomplete data area.

(26) "Increase the frequency or severity" means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

(27) "Lapse" means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

(28) "Lead agency" means the agency responsible for preparing the document, as referred to in paragraph (B)(2) of rule 3745-101-04 of the Administrative Code, unless otherwise provided by MOU or contract.

(29) "Level of service" is a qualitative measure describing operational conditions of traffic, generally described in terms of speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, and safety. The following six levels of service define a facility's operating condition:

- (a) Level of service A - free flow, no restrictions on operating speed.
- (b) Level of service B - stable flow, few speed restrictions
- (c) Level of service C - stable flow, higher volumes, some restricted speed and lane changing
- (d) Level of service D - approaching unstable flow, little freedom to maneuver
- (e) Level of service E - unstable flow, lower speed with some stops
- (f) Level of service F - forced flow, low speed with many stops

(30) "Local air agency" means an agency that has been delegated air pollution control responsibilities by the director of the Ohio Environmental Protection Agency pursuant to section 3704.03 of the Revised Code.

(31) "Maintenance area" means any geographic region of the United States previously designated nonattainment pursuant to the CAAA and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under Section 175a of the CAAA.

(32) "Maintenance plan" means an implementation plan under Section 175a of the CAAA.

(33) "Memorandum of understanding" or "MOU" means an agreement among the agencies required to perform consultation under this chapter defining their respective responsibilities in air quality and transportation planning processes for each nonattainment area.

(34) "Metropolitan planning organization" or "MPO" means that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive transportation planning process under 23 USC 134 and 49 USC 1607 within the MPO boundary as recognized by the governor of Ohio. It is the forum for cooperative transportation decision-making.

(35) "Milestone" has the meaning given in Sections 182(g)(1) and 189(c) of the CAAA. A milestone consists of an emissions level and the date on which that level is to be achieved.

(36) "Motor vehicle emissions budget" means that portion of the total allowable emissions allocated by the applicable implementation plan to highway and transit vehicles. Such portion of the total allowable emissions is defined in a revision to the applicable implementation plan for a certain date for the purpose of meeting reasonable further progress milestones, or attainment or maintenance demonstrations, for any criteria pollutant or its precursors. Such portion can also be defined in an implementation plan revision which was endorsed by the governor or by the Ohio EPA, subject to a public hearing, and submitted to, but not yet approved by, the USEPA. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen (NO<sub>x</sub>) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO<sub>x</sub> budget will be achieved with measures in the implementation plan (as an implementation plan shall do for VOC

milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NO<sub>x</sub> budget if NO<sub>x</sub> reductions are being substituted for the reductions in VOC in milestone years which are required for reasonable further progress.

(37) "National ambient air quality standards" or "NAAQS" means those standards established pursuant to section 109 of the CAAA.

(38) "NEPA" means the National Environmental Policy Act of 1969, as amended (42 USC 4321 et seq.).

(39) "NEPA process completion", for the purposes of this chapter, with respect to FHWA or FTA, means the point at which there is a specific action to make a formal final determination that a project is categorically excluded, to make a finding of no significant impact, or to issue a record of decision on a final environmental impact statement under NEPA.

(40) "Nonattainment area" means any geographic region of the United States which has been designated as nonattainment under Section 107 of the CAAA for any pollutant for which a national ambient air quality standard exists.

(41) "Not classified area" means any carbon monoxide nonattainment area which USEPA has not classified as either moderate or serious.

(42) "Ohio DOT" means the Ohio department of transportation.

(43) "Ohio EPA" means the Ohio environmental protection agency.

(44) "PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to ten microns.

(45) "Project" means a highway project or transit project.

(46) "Protective finding" means a determination by USEPA that the control strategy contained in a submitted control strategy implementation plan revision would have been considered approvable with respect to requirements for emissions reductions if all committed measures had been submitted in enforceable form as required by CAAA Section 110(a)(2)(A).

(47) "Recipient of funds designated under Title 23 of the United States Code USC or the Federal Transit Act" means any agency at any level of state, county, city or regional government that routinely receives Title 23 of the United States Code or Federal Transit Act funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

(48) "Regionally significant project" means a transportation project, other than an exempt project, that is on a facility which serves regional transportation needs (such as access to and

from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network which shall include, at a minimum:

(a) All principal arterial highways,

(b) All fixed guideway transit facilities that offer an alternative to regional highway travel,

(c) Any project that Ohio EPA identifies as having the potential to affect air quality on a regional basis.

(49) "Rural area" means an area external to all metropolitan planning organization boundaries recognized by the governor of Ohio.

(50) "Safety margin" means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance.

(51) "Standard" means a national ambient air quality standard.

(52) "State project" means any highway or transit project which is proposed to receive funding assistance or approval through any state or local transportation program.

(53) "Statewide transportation improvement program" or "STIP" means a staged, multi-year, intermodal program of transportation projects covering the state, or the nonattainment area, attainment area, or maintenance area, which is consistent with the statewide transportation plan and metropolitan transportation plans, and developed pursuant to 23 CFR Part 450.

(54) "Statewide transportation plan" means the official intermodal statewide transportation plan that is developed through the statewide planning process for the state, developed pursuant to 23 CFR Part 450.

(55) "Submarginal area" means any ozone nonattainment area which USEPA has classified as submarginal in 40 CFR Part 81.

(56) "Title 23 USC" means Title 23 of the United States Code.

(57) "Transit" means mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

(58) "Transit project" means an undertaking to implement or modify a transit facility or transit-related program, purchase transit vehicles or equipment, or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local

transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it shall be defined inclusively enough to:

(a) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(b) Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(c) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(59) "Transitional area" means any ozone nonattainment area which USEPA has classified as transitional in 40 CFR Part 81.

(60) "Transportation control measure" or "TCM" means any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in Section 108 of the CAAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purpose of this chapter.

(61) "Transportation improvement program" or "TIP" means a staged, multi-year, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR Part 450.

(62) "Transportation plan" means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR Part 450.

(63) "Transportation project" means a highway project or a transit project.

(64) "USDOT" means the United States Department of Transportation.

(65) "USEPA" means the United States Environmental Protection Agency.

(66) "VMT" means total miles traveled by all vehicles on a given roadway.

(67) "VOC" means volatile organic compound as defined in paragraph (B)(6) of rule 3745-21-01 of the Administrative Code.

(68) "Written commitment" for the purposes of this chapter means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the

appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.

Effective: 02/16/1999

R.C. 119.032 review dates: 12/31/1999

Promulgated Under: RC 119.03

Statutory Authority: RC 3704

Rule Amplifies: RC 3704.03

Prior Effective Dates: 8/21/1995, 6/19/1997

### **3745-101-03 Applicability, Priority, and Frequency of Conformity Determinations.**

(A) Except as provided for in paragraph (E) of this rule or in paragraphs (A) and (B) of rule 3745-101-18 of the Administrative Code, 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 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, rule 3745-101-13 of the Administrative Code 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>, and particles with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM<sub>10</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) Nitrogen oxides in nitrogen dioxide areas; and

(c) Volatile organic compounds, nitrogen oxides, and PM<sub>10</sub> in PM<sub>10</sub> areas if during the interim period, the USEPA Regional Administrator or the director has made a finding, including a finding in an application implementation plan or submitted implementation plan revision, that transportation-related precursor emissions 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 the applicable implementation plan submission, establishes a budget for such emissions as part of the reasonable further progress, attainment, or maintenance strategy;

(D) The provisions of this chapter apply to maintenance areas for twenty years from the date EPA 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.

(G) 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.

(H) 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.

(I) 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 paragraphs (A) and (B) of rule 3745-101-18 of the Administrative Code 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.

(J)(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 paragraphs (A) and (B) of rule 3745-101-18 of the Administrative Code 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 paragraphs (A) and (B) of rule 3745-101-18 of the Administrative Code 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 three years or the existing conformity determination will lapse.

(K) 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 none of the following major steps has occurred within the most recent three 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.

(L) Triggers for transportation plan and TIP conformity determinations. Conformity of existing transportation plans and TIPs must be redetermined within eighteen months of the following, or the existing conformity determination will lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT:

(1) November 24, 1993;

(2) The date of the state's initial submission to EPA of each control strategy implementation plan or maintenance plan establishing a motor vehicle emissions budget;

(3) EPA approval of a control strategy implementation plan revision or maintenance plan which establishes or revises a motor vehicle emissions budget;

(4) EPA approval of an implementation plan revision that adds, deletes, or changes TCMs; and

(5) EPA promulgation of an implementation plan which establishes or revises a motor vehicle emissions budget or adds, deletes, or changes TCMs.

Effective: 2/16/1999

R.C. 119.032 review dates: 12/31/1999

Promulgated Under: RC 119

Statutory Authority: RC 3704

Rule Amplifies: RC 3704.03

Prior Effective Dates: 8/21/1995, 6/19/1997

## **3745-101-14 Procedures for Determining Regional Transportation-related Emissions.**

### (A) General Requirements.

(1) The regional emissions analysis required by rules 3745-101-10 and 3745-101-11 of the Administrative Code for the transportation plan, TIP, or project not from a conforming plan and TIP must include all regionally significant projects expected in the nonattainment or maintenance area. The analysis must include FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by rule 3745-101-04 of the Administrative Code. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (VMT) from such projects must be estimated in accordance with reasonable professional practice.

The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

(2) The emissions analysis may not include for emissions reduction credit any TCMs or other measures in the applicable implementation plan which have been delayed beyond the scheduled date(s) until such time as their implementation has been assured. If the measure has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(3) Emissions reduction credit from projects, programs, or activities which require a regulatory action in order to be implemented may not be included in the emissions analysis unless:

(a) The regulatory action is already adopted by the enforcing jurisdiction;

(b) The project, program, or activity is included in the applicable implementation plan;

(c) The control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of rule 3745-101-10 of the Administrative Code contains a written commitment to the project, program, or activity by the agency with authority to implement it; or

(d) EPA has approved an opt-in to a federally enforced program, EPA has promulgated the program (if the control program is a federal responsibility, such as vehicle tailpipe standards), or the Clean Air Act requires the program without need for individual state action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

(4) Emissions reductions credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities.

(a) Persons or entities voluntarily committing to control measures must comply with the obligations of such commitments.

(b) The conformity implementation plan revision required in 40 CFR Section 51.390 must provide that written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and that such commitments must be fulfilled.

(5) A regional emissions analysis for the purpose of satisfying the requirements of rule 3745-101-11 of the Administrative Code must make the same assumptions in both the “Baseline” and “Action” scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.

(6) The ambient temperatures used for the regional emissions analysis must be consistent with those used to establish the emissions budget in the applicable implementation plan. All other factors, for example the fraction of travel in a hot stabilized engine mode, must be consistent with the applicable implementation plan, unless modified after interagency consultation according to paragraph (C)(1)(a) of rule 3745-101-04 of the Administrative Code to incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(7) Reasonable methods must be used to estimate nonattainment or maintenance area VMT on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

(B) Regional emissions analysis in serious, severe, and extreme ozone nonattainment areas and serious CO nonattainment areas must meet the requirements of paragraphs (B)(1) to (B)(3) of this rule if their metropolitan planning area contains an urbanized area population over two hundred thousand.

(1) By January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations must be made at a minimum using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation. These procedures, methods, and practices are available from DOT and will be updated periodically.

Agencies must discuss these modeling procedures and practices through the interagency consultation process, as required by paragraph (C)(1)(a) of rule 3745-101-04 of the Administrative Code. Network-based travel models must at a minimum satisfy the following requirements:

(a) Network-based travel models must be validated against observed counts (peak and off-peak, if possible) for a base year that is not more than ten years prior to the date of the conformity

determination. Model forecasts must be analyzed for reasonableness and compared to historical trends and other factors, and the results must be documented;

(b) Land use, population, employment, and other network-based travel model assumptions must be documented and based on the best available information;

(c) Scenarios of land development and use must be consistent with the future transportation system alternatives for which emissions are being estimated. The distribution of employment and residences for different transportation options must be reasonable;

(d) A capacity-sensitive assignment methodology must be used, and emissions estimates must be based on a methodology which differentiates between peak and off-peak link volumes and speeds and uses speeds based on final assigned volumes;

(e) Zone-to-zone travel impedances used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits; and

(f) Network-based travel models must be reasonably sensitive to changes in the time(s), cost(s), and other factors affecting travel choices.

(2) Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network-based travel model.

(3) Highway performance monitoring system (HPMS) estimates of vehicle miles traveled (VMT) must be considered the primary measure of VMT within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration will be given to differences between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures of paragraph (C)(1)(a) of rule 3745-101-04 of the Administrative Code.

(C) In all areas not otherwise subject to paragraph (B) of this rule, regional emissions analyses must use those procedures described in paragraph (B) of this rule if the use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to paragraph (B) of this rule may estimate regional emissions using any appropriate methods that account for VMT growth by, for example, extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for VMT per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

(D) PM<sub>10</sub> from construction-related fugitive dust.

(1) For areas in which the implementation plan does not identify construction-related fugitive PM<sub>10</sub> as a contributor to the nonattainment problem, the fugitive PM<sub>10</sub> emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM<sub>10</sub> nonattainment and maintenance areas with implementation plan which identify construction-related fugitive PM<sub>10</sub> as a contributor to the nonattainment problem, the regional PM<sub>10</sub> emissions analysis must consider construction-related fugitive PM<sub>10</sub> and must account for the level of construction activity, the fugitive PM<sub>10</sub> control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

(E) Reliance on previous regional emissions analysis.

(1) The TIP may be demonstrated to satisfy the requirements of rule 3745-101-10 (“Motor Vehicle Emissions Budget”) or 3745-101-11 (“Emission Reductions in Areas Without Motor Vehicle Emissions Budgets”) of the Administrative Code without new regional emissions analysis if the regional emissions analysis already performed for the plan also applies to the TIP. This requires a demonstration that:

(a) The TIP contains all projects which must be started in the TIP’s timeframe in order to achieve the highway and transit system envisioned by the transportation plan;

(b) All TIP projects which are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plan’s regional emissions at the time of the transportation plan’s conformity determination; and

(c) The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

(2) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of rule 3745-101-10 or 3745-101-11 of the Administrative Code without additional regional emissions analysis if allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by transportation plan, and if the project is either:

(a) Not regionally significant; or

(b) Included in the conforming transportation plan (even if it is not specifically included in the latest conforming TIP) with design concept and scope adequate to determine its contribution to the transportation plan’s conformity determination, and the design concept and scope of the project is significantly different from that described in the transportation plan.

Effective: 2/16/1999  
R.C. 119.032 review dates: 12/31/1999  
Promulgated Under: RC 119  
Statutory Authority: RC 3704  
Rule Amplifies: RC 3704.03  
Prior Effective Dates: 8/21/1995

### **3745-101-17 Enforceability of Design Concept and Scope and Project-level Mitigation and Control Measures.**

(A) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under Title 23 USC or the Federal Transit Act, the FHWA, or FTA shall obtain, from the project sponsor or operator, enforceable written commitments to implement, in the construction of the project and operation of the resulting facility or service, any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM<sub>10</sub> or CO impacts. Before making conformity determinations, enforceable written commitments shall also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by rule 3745-101-10 and rule 3745-101-11 of the Administrative Code or used in the project-level hot-spot analysis required by rule 3745-101-09 of the Administrative Code.

(B) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall provide enforceable written commitments and shall comply with the obligations of such commitments.

(C) Enforceable written commitments to mitigation or control measures shall be obtained prior to a positive conformity determination, and project sponsors shall comply with such commitments.

(D) If the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, then the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the applicable hot-spot requirements of paragraph (A) of rule 3745-101-09 of the Administrative Code, the emission budget requirements of rule 3745-101-10 of the Administrative Code, and emission reduction requirements of rule 3745-101-11 of the Administrative Code are satisfied without the mitigation or control measures, and so notifies the agencies involved in the interagency consultation process required under rule 3745-101-04 of the Administrative Code. The MPO and U.S. DOT shall confirm that the transportation plan and TIP still satisfy the requirements of rule 3745-101-10 of the Administrative Code, that the project still satisfies the requirements of paragraph (A) of rule 3745-101-09 of the Administrative Code, and that the conformity determinations for the transportation plan, TIP, and project are therefore still valid. This finding is subject to the applicable public consultation requirements in paragraph (E) of rule 3745-101-04 of the Administrative Code for conformity determinations for projects.

Effective: 2/16/1999

R.C. 119.032 review dates: 12/31/1999

Promulgated Under: RC 119

Statutory Authority: RC 3704

Rule Amplifies: RC 3704.03

Prior Effective Dates: 8/21/1995