

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 PM₁₀ 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_x) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO_x 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_x budget if NO_x 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) "PM₁₀" 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.

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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, NO₂, and particles with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM₁₀).

(2) The provisions of this chapter also apply with respect to emissions of the following precursor pollutants:

(a) VOC and NO_x in ozone areas;

(b) Nitrogen oxides in nitrogen dioxide areas; and

(c) Volatile organic compounds, nitrogen oxides, and PM₁₀ in PM₁₀ 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 PM₁₀ 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.

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3745-101-05 Content of Transportation Plans.

(A) Transportation plans adopted after January 1, 1997 in serious, severe, or extreme ozone nonattainment areas and in serious CO nonattainment areas where the metropolitan planning area contains an urbanized area population greater than two hundred thousand, must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The agency or organization developing the transportation plan, after consultation in accordance with rule 3754-101-04 of the Administrative Code, may choose and years to be horizon years, subject to the following restrictions:

(a) Horizon years may be no more than ten years apart.

(b) The first horizon year may be no more than ten years from the base year used to validate the transportation demand planning model.

(c) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year.

(d) The last horizon year must be the last year of the transportation plan's forecast period.

(2) For these horizon years:

(a) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and rule 3754-101-04 of the Administrative Code;

(b) The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modification to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

(c) Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

(B) Ozone or CO nonattainment areas which are reclassified from moderate to serious and have an urbanized population greater than two hundred thousand shall meet the requirements of paragraph (A) of this rule within two years from the date of reclassification.

(C) Transportation plans for other areas shall meet the requirements of paragraph (A) of this rule at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans shall describe the specifically enough to allow determination of conformity according to the criteria and procedures of rules 3754-101-07 to 3745-101-11 of the Administrative Code.

(D) Savings.

The requirements of this rule supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

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3745-101-06 Relationship with NEPA and Fiscal Constraints.

(A) The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. If the NEPA process results in a project with design concept and scope significantly different from that in the transportation plan or TIP, then the projects shall meet the criteria in rules 3754-101-07 to 3745-101-11 of the Administrative Code for projects not from a TIP before NEPA process completion.

(B) Transportation plans and TIPs shall be fiscally constrained and meet the requirements of 23 CFR 450.322 (b)(11) and 450.324 (e), as in effect on the date of adoption of this chapter, in order to be found in conformity. The determination that a transportation plan or TIP is fiscally constrained shall be subject to consultation in accordance with rule 3754-101-04 of the Administrative Code.

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3745-101-07 Criteria and Procedures for Conformity Determination, Assumptions, Emissions Model, and Consultation.

(A) In order to be found to conform, each transportation plan, TIP, and FHWA/FTA project shall satisfy the applicable criteria and procedures in paragraphs (A) to (G) of rule 3754-101-07 of the Administrative Code as listed in Table 1 in paragraph (B) of this rule, and shall comply with all applicable conformity requirements of implementation plans and of this rule and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the relevant pollutant(s), and the status of the implementation plan.

(B) The following table indicates the criteria and procedures in rules 3754-101-07 to 3745-101-11 of the Administrative Code which apply for each action in each time period.

Table 1- Conformity Criteria

All Actions at all Times:

3754-101-07 (H)	Latest Planning Assumptions
3754-101-07 (I)	Latest Emission Model
3754-101-07 (J)	Consultation

Transportation Plan:

3754-101-08 (A)(1)	TCMS
3754-101-10 or 3754-101-11	Emissions Budget or Emission Reduction

TIP:

3754-101-08	TCMS
3754-101-10 or 3754-101-11	Emissions Budget or Emission Reduction

Project (From a Conforming Plan and TIP):

3754-101-08	Currently Conforming Plan and TIP
3754-101-08	Project from a Conforming Plan and TIP
3754-101-09	CO and PM ₁₀ Hot Spots
3754-101-09	PM ₁₀ Control Measures

Project (Not from a Conforming Plan and TIP):

3754-108 (A)(3)	TCMS
3754-101-08	Currently Conforming Plan and TIP
3754-101-09	CO and PM ₁₀ Hot Spots
3754-101-09	PM ₁₀ Control Measures
3754-101-10 or 3754-101-11	Emissions Budget or Emission Reduction

(C) In addition to the criteria listed in Table One in paragraph (B) of this rule that are required to be satisfied at all times, in ozone nonattainment and maintenance areas conformity

determinations must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following:

(1) In ozone nonattainment and maintenance areas the budget test must be satisfied as required by rule 3754-101-10 of the Administrative Code for conformity determinations made:

(b) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision (usually moderate and above areas), the emission reduction tests must be satisfied as required by rule 3754-101-11 of the Administrative Code for conformity determinations made:

(b) If EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(3) An ozone nonattainment area must satisfy the emission reduction test for NO_x, as required by rule 3754-101-11 of the Administrative Code, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a fifteen percent plan or phase one attainment demonstration that does not include a motor vehicle emissions budget for NO_x. The implementation plan will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from the NO_x emissions levels in 1990.

(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision (usually marginal and below areas) must satisfy one of the following requirements:

(a) The emission reduction tests required by rule 3754-101-11 of the Administrative Code; or

(b) The state PM₁₀ submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by rule 3754-101-10 of the Administrative Code must be satisfied using the submitted motor vehicle emissions budget(s) (as described in paragraph (C)(1) of this rule).

(5) Notwithstanding paragraphs (C)(1) and (C)(2) of this rule, moderate and above ozone nonattainment areas with three years of clean data that have not submitted a maintenance plan

and that EPA has determined are not subject to the Clean Air Act reasonably further progress and attainment demonstration requirement must satisfy one of the following requirements:

(a) The emission reduction tests as required by rule 3754-101-11 of the Administrative Code;

(b) The budget test as required by rule 3754-101-10 of the Administrative Code, using the motor vehicle emissions budgets in the submitted control strategy implementation plan (subject to the timing requirements of paragraph (C)(1) of this rule); or

(c) The budget test as required by rule 3754-101-10 of the Administrative Code, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data.

(D) In addition to the criteria listed in Table One in paragraph (B) of this rule that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget, and/or emission reduction test are satisfied as described in the following:

(1) FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot spot test required by paragraph (A) of rule 3754-101-09 of the Administrative Code at all times. Until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects must also satisfy the hot spot test required by paragraph (B) of rule 3754-101-09 of the Administrative Code.

(2) In CO nonattainment and maintenance areas the budget test must be satisfied as required by rule 3754-101-10 of the Administrative Code for conformity determinations made:

(a) Forty-five days after control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(b) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(3) Except as provided in paragraph (D)(4) of this rule, in CO nonattainment areas the emission reduction tests must be satisfied as required by rule 3754-101-11 of the Administrative Code for conformity determinations made:

(a) During the first forty-five days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(b) If EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(4) CO nonattainment areas that have not submitted a maintenance plan and that are required to submit as attainment demonstration (e.g., moderate CO areas with a design value of 12.7 ppm or less or not classified CO areas) must satisfy one of the following requirements:

(a) The emission reduction tests required by rule 3754-101-11 of the Administrative Code; or

(b) The state must submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by rule 3754-101-10 of the Administrative Code must be satisfied using the submitted motor vehicle emissions budget(s) (as described in paragraph (D)(2) of this rule).

(E) In addition to the criteria listed in Table One in paragraph (B) of this rule that are required to be satisfied at all times, in PM₁₀ nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget, and/or emission reduction test are satisfied as described in the following:

(1) FHWA/FTA projects in PM₁₀ nonattainment or maintenance areas must satisfy the hot spot test required by paragraph (A) of rule 3754-101-09 of the Administrative Code.

(2) In PM₁₀ nonattainment and maintenance areas the budget test must be satisfied as required by rule 3754-101-10 of the Administrative Code for conformity determinations made:

(a) Forty-five days after control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(b) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(3) In PM₁₀ nonattainment areas the emission reduction tests must be satisfied as required by rule 3754-101-11 of the Administrative Code for conformity determinations made:

(a) During the first forty-five days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(b) If EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity

purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan; or

(c) If the submitted implementation plan revision is a demonstration of impracticability under CAA Section 189 (A)(1)(B)(II) and does not demonstrate attainment.

(F) NO₂ nonattainment and maintenance areas. In addition to the criteria listed in Table One in paragraph (B) of this rule that are required to be satisfied at all times, in NO₂ nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following:

(1) In NO₂ nonattainment and maintenance areas the budget test must be satisfied as required by rule 3754-101-10 of the Administrative Code for conformity determinations made:

(a) Forty-five days after control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(b) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(2) In NO₂ nonattainment areas the emission reduction tests must be satisfied as required by rule 3754-101-11 of the Administrative Code for conformity determinations made:

(a) During the first forty-five days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(b) If EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.

(G) This paragraph applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. This paragraph does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of rule 3745-101-07, paragraph (A)(3) of rule 3745-101-08, and rule 3745-101-

09 of the Administrative Code until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA project must also satisfy the requirements of paragraph (B) of rule 3745-101-09 of the Administrative Code (“Localized CO and PM₁₀ Violations (Hot Spots)”).

(2) Isolated rural nonattainment and maintenance areas are subject to the budget and/or emissions reduction test as described in paragraph (C) to (F) of this rule, with the following modifications:

(a) When the requirements of rules 3745-101-10 and 3745-101-11 of the Administrative Code apply to isolated rural nonattainment and maintenance areas, references to “transportation plan” or “TIP” should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the rural nonattainment or maintenance area.

(b) In isolated rural nonattainment and maintenance areas that are subject to rule 3745-101-10 of the Administrative Code, FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the time frame of the attainment demonstration or maintenance plan. In all conformity analysis years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one of the following requirements:

(i) Rule 3745-101-10 of the Administrative Code;

(ii) Rule 3745-101-11 of the Administrative Code (including regional emission analysis for NO_x in all ozone nonattainment and maintenance areas, notwithstanding paragraph (D)(2) of rule 3745-101-11 of the Administrative Code); or

(iii) As demonstrated by the air quality dispersion model technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the timeframe of the statewide transportation plan, must not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Control measures assumed in the analysis must be enforceable.

(c) the choice of requirements in paragraph (G)(2)(b) of this rule and the methodology used to meet the requirements of paragraph (G)(2)(b)(iii) of this rule must be determined through the interagency consultation process required in paragraph (C)(1)(g) of rule 3745-101-04 of the Administrative Code through which, with the consultation of EPA and DOT, the relevant recipients of Title 23 USC or federal transit laws funds, the local air quality agency, the state air quality agency, and the state department of transportation are to reach consensus about the option and methodology selected. Any unresolved disputes shall be resolved in accordance with the procedures in paragraph (D) of rule 3745-101-04 of the Administrative Code.

(H) During all periods the conformity determination, with respect to all other applicable criteria in rule 3745-101-07 to rule 3745-101-12 of the Administrative Code, shall be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination shall satisfy the requirements of paragraphs (H)(1) to (H)(5) of this rule.

(1) Assumptions shall be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO, including, but not limited to, assumptions regarding vehicle miles traveled per capita or household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, and the geographic distribution of population growth. The conformity determination shall also be based on the latest assumptions about current and future background concentrations. 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, after consultation with the Ohio EPA.

(2) The conformity determination for each transportation plan and TIP shall discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

(3) The conformity determination shall include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(4) The conformity determination shall use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures which have been implemented already.

(5) Key assumptions shall be specified and included in the draft documents and supporting materials used for interagency and public consultation that is required by rule 3745-101-04 of the Administrative Code.

(I) During all periods the conformity determination shall be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by U.S. EPA for use in the preparation or revision of implementation plans in the state or area is used for the conformity analysis.

(1) Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions shall be approved by U.S. EPA before they are used in the conformity analysis.

(2) EPA will consult with DOT to establish a grace period following the specification of any new model. The grace period will be no less than three months and no more than twenty-four months after notice of availability is published in the Federal Register. The length of the grace period will depend on the degree of change in the model and the scope of the re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA will announce the appropriate grace period in the Federal Register.

(3) Conformity analyses for which the emissions analysis was begun before the Federal Register notice of availability of the latest emission model, or during the grace period announced in such notice, may continue to use the previous version of the model for transportation plans and TIPS. The previous model may also be used for projects if the analysis was begun during the grace period or before the Federal Register notice of availability, provided no more than three years have passed since the draft environmental document was issued.

(J) All conformity determinations shall be made according to the consultation procedures in this chapter, and according to the public involvement procedures established by the MPO in compliance with 23 CFR Part 450. This criterion applies during all periods. Until this chapter is approved by U.S. EPA as an implementation plan revision, the conformity determination shall be made according to the procedures in 40 CFR Section 51.402(a)(2) and 40 CFR Section 51.402(e). Once this chapter has been approved by U.S. EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

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3745-101-08 Criteria and Procedures for Implementation of TCMs, Current Conformity, and Projects from a Plan and TIP.

(A) During all periods the transportation plan, TIP, or any FHWA/FTA project which is not from a conforming plan and TIP shall provide for the timely implementation of TCMs from the applicable implementation plan.

(1) For transportation plans, this criterion is satisfied if the following two conditions are met:

(a) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under Title 23 USC or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.

(b) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

(2)(a) The TIP cannot be found to conform if federal funding intended for TCMs in the applicable implementation plan has previously been programmed but is reallocated to projects in the TIP other than TCMs (or if there are no other TCMs in the TIP, to projects in the TIP other than projects which are eligible for federal funding under the Intermodal Transportation Equity Act for the 21st Century's (TEA-21) Congestion Mitigation and Air Quality Improvement Program) and the TCMs are behind the schedule in the implementation plan.

(b) The criterion that the TIP shall provide for the timely implementation of TCMs from the applicable implementation plan is satisfied if the following conditions are met:

(i) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under Title 23 USC or the Federal Transit Act are on or ahead of schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and U.S. DOT have determined that past obstacles to implementation of the TCMs are being overcome, and that all state and local government with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area. Maximum priority to approval or funding of TCMs includes demonstrations with respect to funding acceleration, commitment of staff or other agency resources, diligent efforts to seek approvals, and similar actions.

(ii) If TCMs in the applicable implementation plan have previously been programmed for federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible

for federal funding intended for air quality improvement projects, e.g., the congestion mitigation and air quality improvement program.

(iii) Nothing in the TIP interferes with the implementation of any TCM in the applicable implementation plan.

(3) For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

(B) During all periods there shall be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and U.S. DOT according to the criteria and procedures of this chapter.

(a) Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by U.S. DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of paragraphs (F) to (J) of rule 3745-101-03 of the Administrative Code.

(b) This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of this chapter are satisfied.

(C) During all periods the project shall come from a conforming transportation plan or TIP. If this criterion is not satisfied, then the project shall satisfy all criteria in Table 1 of paragraph (B) of rule 3745-101-07 of the Administrative Code for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (C)(1) of this rule and from a conforming TIP if it meets the requirements of paragraph (C)(2) of this rule. Special provisions for TCMs in an applicable implementation plan are provided in paragraph (C)(3) of this rule.

(1) A project is to be from a conforming transportation plan if one of the following conditions applies:

(a) For projects which are required to be identified in the transportation plan in order to satisfy rule 3745-101-05 of the Administrative Code, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(b) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

(2) A project is considered to be from a conforming TIP if the following conditions are met:

(a) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which described in the TIP, or in a manner which would significantly impact use of the facility; and

(b) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, then enforceable written commitments to implement such measures must be obtained from the project sponsor or operator as required in paragraph (A) of rule 3745-101-17 of the Administrative Code in order for the project to be considered from a conforming TIP. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

(3) TCMs. This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

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3745-101-09 Localized CO and PM₁₀ Violations and Compliance with PM₁₀ Control Measures.

(A) The FHWA/FTA project must not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO and PM₁₀ violation in CO and PM₁₀ nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration must be performed according to the requirements of paragraph (C)(1)(a) of rule 3745-101-04 and rule 3745-101-15 of the Administrative Code.

(B) For projects which are not of the type identified by either paragraph (F)(1) of rule 3745-101-15 or paragraph (F)(4) of rule 3745-101-15 of the Administrative Code, this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violation presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration must be performed according to the requirements of paragraph (F)(2) of rule 3745-101-15 of the Administrative Code. During all periods the FHWA/FTA project must comply with PM₁₀ control measures in the applicable implementation plan. This criterion is satisfied if control measures, for the purpose of limiting PM₁₀ emissions from the construction activities or normal use and operation associated with the project, contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

(C) This paragraph applies for CO nonattainment areas as describer in paragraph (D)(1) of rule 3745-101-07 of the Administrative Code. Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project. The demonstration must be performed according to consultation requirements of paragraph (C)(1)(a) of rule 3745-101-04 of the Administrative Code and the methodology requirements of rule 3745-101-15 of the Administrative Code.

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3745-101-10 Motor Vehicle Emissions Budgets.

(A) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in paragraphs (C) to (G) of rule 3745-101-07 of the Administrative Code. This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in paragraph (C) of this rule are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.

(B) Consistency with motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the last year of the transportation plan's forecast period, and for any intermediate years as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows:

(1) Until a maintenance plan is submitted:

(a) Emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) must be less than or equal to that year's motor vehicle emissions budget(s); and

(b) Emissions in years for which no motor vehicle emissions budget(s) are specifically established must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year. For example, emissions in years after the attainment year for which the implementation plan does not establish a budget must be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

(2) When a maintenance plan is submitted:

(a) Emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets. If the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate as existing violation in the years before the last year of the maintenance plan. The interagency consultation process required by rule 3745-101-04 of the Administrative Code must determine what must be considered in order to make such a finding;

(b) In all conformity analysis years after the last year of the maintenance plan, emissions must be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan; and

(c) If an approved control strategy implementation plan has established motor vehicle emissions budgets for years in the timeframe of the transportation plan, emissions in these years must be

less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years.

(C) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant or pollutant precursor in paragraph (C) of rule 3745-101-03 of the Administrative Code for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

(D) Consistency with the motor vehicle emissions budget(s) must be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit project expected in the nonattainment or maintenance area in the timeframe of the transportation plan.

(1) Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional emissions analysis that meets the requirements of rules 3745-101-14 and 3745-101-04 (C)(1)(a) of the Administrative Code.

(2) The regional emissions analysis may be performed for any years in the timeframe of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the attainment year (if it is in the timeframe of the transportation plan) and the last year of the plan's forecast period. Emissions in years for which consistency with motor vehicle emissions budgets must be demonstrated, as required in paragraph (B) of this rule, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(E) Motor vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance plans.

(1) Consistency with the motor vehicle emissions budget in submitted control strategy implementation plan revisions or maintenance plans must be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes, or beginning forty-five days after the control strategy implementation plan revision or maintenance plan has been submitted (unless EPA has declared the motor vehicle emissions budget(s) inadequate for transportation conformity purposes). However, submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the period of years addressed by the approved implementation plan.

(2) If EPA has declared an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes, the inadequate budget(s) must not be used to satisfy the requirements of this rule. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there are no previous approved implementation plans or implementation plan submissions with motor vehicle emissions budgets, the emission reduction tests required by rule 3745-101-11 of the Administrative Code must be satisfied.

(3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes more than forty-five days after its submission to EPA, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy rule 3745-101-08 of the Administrative Code, which requires a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

(4) EPA will not find a motor vehicle emissions budget in a submitted control strategy implementation plan revisions or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

(a) The submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his or her designee) and was subject to a state public hearing;

(b) Before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, state, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;

(c) The motor vehicle emissions budget(s) is clearly identified and precisely quantified;

(d) The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission);

(e) The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

(f) Revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see rule 3745-101-02 for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

(5) Before determining the adequacy of a submitted motor vehicle emissions budget, EPA will review the state's compilation of public comments and response to comments that are required to be submitted with any implementation plan. EPA will document its consideration of such comments and responses in a letter to the state indicating the adequacy of the submitted motor vehicle emissions budget.

(6) When the motor vehicle emissions budget(s) used to satisfy the requirements of this rule are established by an implementation plan submittal that has not yet been approved or disapproved by EPA, the MPO and DOT's conformity determinations will be deemed to be a statement that the MPO and DOT are not aware of any information that would indicate that emissions

consistent with the motor vehicle emissions budget will cause or contribute to any new violation of any standard; increase the frequency or severity of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

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3745-101-11 Criteria and Procedures: Emission Reductions in Areas without Motor Vehicle Emissions Budgets.

(A) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must contribute to emissions reductions. This criterion applies as described in paragraphs (C) to (G) of rule 3745-101-07 of the Administrative Code. It applies to the net effect of the action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

(B) This criterion may be met in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA Section 182 (B)(1) and in moderate with design value greater than 12.7 ppm and serious CO nonattainment areas if a regional emissions analysis that satisfies the requirements of rule 3745-101-14 of the Administrative Code and paragraphs (E) to (H) of this rule demonstrates that for each analysis year and for each of the pollutants described in paragraph (D) of this rule:

(1) The emissions predicted in the “Action” scenario as defined in paragraph (E) of this rule are less than the emissions predicted in the “Baseline” scenario as defined in paragraph (F) of this rule, and this can be reasonably expected to be true in the periods between the analysis years; and

(2) The emissions predicted in the “Action” scenario are lower than 1990 emissions by any nonzero amount.

(C) This criterion may be met in PM₁₀ and NO₂ nonattainment areas; marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA Section 182 (B)(1); and moderate with design value less than 12.7 ppm and below CO nonattainment areas if a regional emissions analysis that satisfies the requirements of rule 3745-101-14 of the Administrative Code and paragraphs (E) to (H) of this rule demonstrates that each analysis year and for each of the pollutant described in paragraph (D) of this rule, one of the following requirements is met:

(1) The emissions predicted in the “Action” scenario as defined in paragraph (E) of this rule are less than the emissions predicted in the “Baseline” scenario and this can be reasonably expected to be true in the periods between the analysis years; or

(2) The emissions predicted in the “Action” scenario are not greater than baseline emissions. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the conformity implementation plan revision required by 40 CFR Section 51.390 defines the baseline emissions for a PM₁₀ area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(D) The regional emissions analysis must be performed for the following pollutants:

(1) VOC in ozone areas;

(2) NO_x in ozone areas, unless the EPA Administrator determines that additional reductions of NO_x would not contribute to attainment;

(3) CO in CO areas;

(4) PM₁₀ in PM₁₀ areas;

(5) Transportation-related precursors of PM₁₀ in PM₁₀ nonattainment and maintenance areas if the EPA Regional Administrator or the director of the state air agency has made a finding that such precursor emissions from within the area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and DOT; and

(6) NO_x in NO₂ areas.

(E) The regional emissions analysis must be performed for analysis years that are no more than ten years apart. The first analysis year must be no more than five years beyond the year in which the conformity determination is being made. The last year of transportation plan's forecast period must also be an analysis year.

(F) The regional emissions analysis required by paragraphs (B) and (C) of this rule must estimate the emissions that would result from the "Baseline" scenario in each analysis year. The "Baseline" scenario must be defined for each of the analysis years. The "Baseline" scenario is the future transportation system that will result from current programs, including the following (except that exempt projects listed in rule 3745-101-18 of the Administrative Code need not be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services, and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first year of the previously conforming transportation plan and/or TIP; or have completed the NEPA process.

(G) The regional emissions analysis required by paragraphs (B) and (C) of this rule must estimate the emissions that would result from the "Action" scenario in each analysis year. The "Action" scenario must be defined for each of the analysis years. The "Action" scenario is the transportation system that would result from the implementation of the proposed action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The "action" scenario must include the following (except that exempt projects and projects exempt from regional emissions analysis as listed in rule 3745-101-18 of the Administrative Code need not be explicitly considered):

(1) All facilities, services, and activities in the "Baseline" scenario;

(2) Complete of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination;

(4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FTWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(H) Projects not from a conforming transportation plan and TIP. For regional emissions analysis required by paragraphs (B) and (C) of this rule, if the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the “Baseline” scenario must include the project with its original design concept and scope, and the “Action” scenario must include the project with its new design concept and scope.

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3745-101-12 Consequences of Control Strategy Implementation Plan Failures.

(A) Disapprovals.

(1) If EPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding). The conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions, as a result of the disapproval, are imposed on the nonattainment area under Section 179 (B)(1) of the CAA. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan fulfilling the same CAA requirements is submitted and conformity to this submission is determined.

(3) In disapproving a control strategy implementation plan revision, EPA will make a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

(B) In areas where EPA notifies the state, MPO, and DOT of the state's failure to submit a control strategy implementation plan or submission of an incomplete control strategy implementation plan revision (either of which initiates the sanction process under CAA Sections 179 or 110(M)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under Section 179 (B)(1) of the CAA, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator.

(C) If EPA promulgates a federal implementation plan that contain motor vehicle emissions budget(s) as a result of state failure, the conformity lapse imposed by this rule because of that state failure is removed.

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3745-101-13 Requirements for Adoption or Approval of Projects by Other Recipients of Funds Designated Under Title 23 U.S.C. or the Federal Transit Laws.

(A) Except as provided in paragraph (B) of this rule, no recipient of federal funds designated under Title 23 U.S.C. or the federal transit laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(2) There is a currently conforming transportation plan and TIP, and a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of rule 3745-101-10 and/or rule 3745-101-11 of the Administrative Code for a project not from a conforming transportation plan and TIP).

(B) In isolated rural nonattainment and maintenance areas subject to paragraph (G) of rule 3745-101-07 of the Administrative Code, no recipient of federal funds designated under Title 23 U.S.C. or the federal transit laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) The project was included in the regional emissions analysis supporting the most recent conformity determination for the portion of the statewide transportation plan and TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly; or

(2) A new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project were implemented (consistent with the requirements of rule 3745-101-10 and/or rule 3745-101-11 of the Administrative Code for a project not from a conforming transportation plan and TIP).

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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) PM₁₀ from construction-related fugitive dust.

(1) For areas in which the implementation plan does not identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the fugitive PM₁₀ emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM₁₀ nonattainment and maintenance areas with implementation plan which identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the regional PM₁₀ emissions analysis must consider construction-related fugitive PM₁₀ and must account for the level of construction activity, the fugitive PM₁₀ 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.

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3745-101-15 Procedures for Determining Localized CO and PM₁₀ Concentrations (Hot-spot Analysis).

(A) CO hot-spot analysis.

(1) The demonstration required by rule 3745-101-09 of the Administrative Code (“Localized CO and PM₁₀ Violations”) must be based on quantitative analysis using the applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W (Guideline of Air Quality Models). These procedures must be used in the following cases, unless different procedures developed through the interagency consultation process required in rule 3745-101-04 of the Administrative Code and approved by the EPA Regional Administrator are used:

(a) For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of violation or possible violation;

(b) For projects affecting intersections that are at level-of-service D, E, or F, or those that will change to level-of-service D, E, or F because of increased traffic volumes related to the project;

(c) For any project affecting one or more of the top three intersections in the nonattainment or maintenance area with highest traffic volumes, as identified in the applicable implementation plan; and

(d) For any project affecting one or more of the top three intersections in the nonattainment or maintenance area with the worst level of service, as identified in the applicable implementation plan.

(2) In cases other than those described in paragraph (A)(1) of this rule, the demonstration required by rule 3745-101-09 of the Administrative Code may be based on either:

(a) Quantitative methods that represent reasonable and common professional practice; or

(b) A qualitative consideration of local factors, if this can provide a clear demonstration that the requirements of rule 3745-101-09 of the Administrative Code are met.

(B) PM₁₀ hot-spot analysis.

(1) The hot-spot demonstration required by rule 3745-101-09 of the Administrative Code must be based on quantitative analysis methods for the following types of projects:

(a) Projects which are located at sites at which violations have been verified by monitoring;

(b) Projects which are located at sites which have vehicle and roadway emission and dispersion characteristics that are essentially identical to those of sites with verified violations (including sites near one at which a violation has been monitored); and

(c) New or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location.

(2) Where quantitative analysis methods are not required, the demonstration required by rule 3745-101-09 of the Administrative Code may be based on a qualitative consideration of local factors.

(3) The identification of the sites described in paragraph (B)(1)(a) and (B)(1)(b) of this rule, and other cases where quantitative methods are appropriate, must be determined through the interagency consultation process required in rule 3745-101-04 of the Administrative Code. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels.

(4) The requirements for quantitative analysis contained in paragraph (B) of this rule will not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.

(C) General requirements.

(1) Estimated pollutant concentrations must be based on the total emissions burden which may result from the implementation of the project, summed together with future background concentrations. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project.

(2) Hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact concentrations have been identified. The future background concentration should be estimated by multiplying current background by the ratio of future to current emission factors.

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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 PM₁₀ 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.

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3745-101-18 Exempt Projects.

(A) Notwithstanding the other requirements of this chapter, highway and transit projects of the types listed in paragraph (B) of this rule are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in paragraph (B) of this rule is not exempt if the MPO in consultation with other agencies (see paragraph (C)(1)(c) of rule 3745-101-04 of the Administrative Code), the U.S. EPA, the FHWA in the case of a highway project, or the FTA in the case of a transit project, concur that it has potentially adverse emissions impacts for any reason. States and MPOs shall assure that exempt projects do not interfere with TCM implementation.

(B) Subject to the provisions of paragraph (A) of this rule, the following highway and transit projects are exempt from the requirement of a conformity determination:

(1) Safety

(a) Railroad/highway crossing;

(b) Hazard elimination program;

(c) Safer non-federal-aid system roads;

(d) Shoulder improvements;

(e) Increasing sight distance;

(f) Safety improvement program;

(g) Traffic control devices and operating assistance other than signalization projects;

(h) Railroad/highway crossing warning devices;

(i) Guardrails, median barriers, crash cushions;

(j) Pavement resurfacing or rehabilitation;

(k) Pavement marking demonstration;

(l) Emergency relief, e.g., 23 U.S.C. 125;

(m) Fencing;

(n) Skid treatments;

(o) Safety roadside rest areas;

- (p) Adding medians;
 - (q) Truck climbing lanes outside the urbanized area;
 - (r) Lighting improvement;
 - (s) Widening narrow pavements or reconstructing bridges without additional travel lanes;
 - (t) Emergency truck pullovers;
- (2) Mass transit
- (a) Operating assistance to transit agencies;
 - (b) Purchase of support vehicles;
 - (c) Rehabilitation of transit vehicles in PM₁₀ nonattainment or maintenance areas, only if projects are in compliance with control measures in the applicable implementation plan;
 - (d) Purchase of office, shop, and operating equipment for existing facilities;
 - (e) Purchase of operating equipment for vehicles, e.g., radios, fare boxes, lifts, etc.;
 - (f) Construction or renovation of power, signal, and communications systems;
 - (g) Construction of small passenger shelters and information kiosks;
 - (h) Reconstruction or renovation of transit building and structures, e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures;
 - (i) Rehabilitation or reconstruction of track structures, track, and track bed in existing rights-of-way;
 - (j) Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet in PM₁₀ nonattainment or maintenance areas, only if projects are in compliance with control measures in the applicable implementation plan;
 - (k) Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR Part 771;
- (3) Air quality
- (a) Continuation of ride-sharing and van-pooling promotion activities at current levels;
 - (b) Bicycle and pedestrian facilities;

(4) Other

(a) Specific activities which do not involve or lead directly to construction, such as:

- (i) Planning and technical studies;
- (ii) Grants for training and research programs;
- (iii) Planning activities conducted pursuant to Titles 23 and 49 U.S.C.;
- (iv) Federal-aid systems revisions;

(b) Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action;

(c) Noise attenuation;

(d) Advanced land acquisitions pursuant to 23 CFR Part 712.204(D);

(e) Acquisition of scenic easements;

(f) Plantings, landscaping, etc.;

(g) Sign removal;

(h) Directional and informational signs;

(i) Transportation enhancement activities except rehabilitation and operation of historic transportation building, structures, or facilities;

(j) Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational, or capacity changes.

(C) Notwithstanding the other requirements of this chapter, highway and transit projects of the types listed in paragraph (D) of this rule are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM₁₀ concentrations shall be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in paragraph (D) of this rule is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see paragraph (C)(1)(c) of rule 3745-101-04 of the Administrative Code), the U.S. EPA, the FHWA in the case of a highway project, or the FTA in the case of a transit project, concur that it has potential regional impacts for any reason.

(D) Subject to the provisions of paragraph (C) of this rule, the following highway and transit projects are exempt from requirements of a regional emissions analysis:

(1) Intersection channelization projects;

(2) Intersection signalization projects at individual intersections;

- (3) Interchange reconfiguration projects;
- (4) Changes in vertical and horizontal alignment;
- (5) Truck size and weight inspection stations;
- (6) Bus terminal and transfer points.

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3745-101-19 Traffic Signal Synchronization Projects.

Traffic signal synchronization projects may be approved, funded, and implemented without satisfying the requirements of this chapter. However, all subsequent regional emissions analyses required by rules 3745-101-10 and 3745-101-11 of the Administrative Code for transportation plans, TIPs, or projects not from a conforming plan and TIP must include such regionally significant traffic signal synchronization projects.

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