

3745-102-02 **Definitions.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the "Incorporation by Reference" paragraph at the end of this rule.]

(A) Terms used but not defined in this chapter shall have the meaning given them by the CAA and USEPA's regulations, 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 3745-102 of the Administrative Code:

- (1) "Affected federal land manager" means the federal agency or the federal official charged with direct responsibility for management of an area designated as Class I under 42 USC 7472 that is located within one hundred kilometers of the proposed federal action.
- (2) "Applicable implementation plan" 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 CAA, or promulgated under Section 110(c) of the CAA, or promulgated or approved pursuant to regulations promulgated under Section 301(d) of the CAA and which implements the relevant requirements of the CAA.
- (3) "Areawide air quality modeling analysis" means an assessment on a scale that includes the entire nonattainment or maintenance area, which uses an air quality dispersion model to determine the effects of emissions on air quality.
- (4) "CAA" means the Clean Air Act as amended November 15, 1990; 42 USC 7401 to 7671q.
- (5) "Cause or contribute to a new violation" means a federal action that:
 - (a) Causes a new violation of a national ambient air quality standard at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the federal action were not taken; or
 - (b) Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a national ambient air quality standard at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

- (6) "Caused by", as used in the terms "direct emissions" and "indirect emissions," means emissions that would not otherwise occur in the absence of the federal action.
- (7) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, contained in 42 USC 9601 to 9675. .
- (8) "CO" means carbon monoxide.
- (9) "Criteria pollutant or standard" means any pollutant for which there is an established national ambient air quality standard at 40 CFR Part 50.
- (10) "Direct emissions" means those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and occur at the same time and place as the action.
- (11) "Emergency" means a situation where extremely quick action on the part of the federal agencies involved is needed and where the timing of such federal activities makes it impractical to meet the requirements of this chapter, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations.
- (12) "Emissions budgets" means those portions of the total allowable emissions defined in a USEPA-approved 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, specifically allocated by the applicable implementation plan to mobile sources, to any stationary source or class of stationary sources, to any federal action or class of action, to any class of area sources, or to any subcategory of the emissions inventory. The allocation system shall be specific enough to assure meeting the criteria of Section 176(c)(1)(B) of the CAA. An emissions budget may be expressed in terms of an annual period, a daily period, or other period established in the applicable implementation plan.
- (13) "Emission offsets" for the purposes of paragraph (B) of rule 3745-102-05 of the Administrative Code, means emissions reductions which are quantifiable, consistent with the applicable implementation plan attainment and reasonable further progress demonstrations, surplus to reductions required by and credited to other applicable implementation plan provisions, enforceable under both state and federal law, and permanent within the time frame specified by the program. Emissions reductions intended to be achieved as emissions offsets under this chapter shall be monitored and enforced in a manner equivalent to that under USEPA's new source review requirements.

- (14) "Emissions that a federal agency has a continuing program responsibility for" means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a non-federal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.
- (15) "Facility" means any building, structure, roadway, installation, operation, or combination thereof.
- (16) "Federal action" means any activity engaged in by a department, agency or instrumentality of the federal government, or any activity that a department, agency or instrumentality of the federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under Title 23 of the United States Code or the Federal Transit Act, contained in 49 USC 53. Where the federal action is a permit, license, or other approval for some aspect of a non-federal undertaking, the relevant activity is the part, portion, or phase of the non-federal undertaking that requires the federal permit, license, or approval.
- (17) "Federal agency" means, for purposes of this chapter, a federal department, agency, or instrumentality of the federal government to the extent that it is engaging in, supporting in any way or providing financial assistance for, licensing or permitting, or approving an action in the state of Ohio.
- (18) "Increase the frequency or severity of any existing violation of any standard in any area" means to cause a nonattainment area to exceed a standard more often, or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question if the project were not implemented.
- (19) "Indirect emissions" means those emissions of a criteria pollutant or its precursors that:
- (a) Are caused by the federal action, but may occur later in time or may be farther removed in distance from the action itself but are still reasonably foreseeable; and
 - (b) The federal agency can practicably control and will maintain control over due to a continuing program responsibility of the federal agency.

- (20) "Local air agency" means an agency that has been delegated air pollution control responsibilities by the director pursuant to Section 3704.03 of the Revised Code.
- (21) "Local air quality modeling analysis" means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.
- (22) "Maintenance area" means any geographic region of the United States previously designated nonattainment pursuant to the CAA and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under Section 175A of the CAA.
- (23) "Maintenance plan" means a revision to the applicable implementation plan, meeting the requirements of Section 175A of the CAA.
- (24) "Metropolitan planning organization" or "MPO" means that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 USC 134 and 49 USC 5303 within the MPO boundary as recognized by the governor of Ohio.
- (25) "Milestone" has the meaning given in Sections 182(g)(1) and 189(c)(1) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.
- (26) "National ambient air quality standards" or "NAAQS" means those standards established pursuant to Section 109 of the CAA and include standards for CO, Pb, NO₂, ozone, PM₁₀ and SO₂.
- (27) "NEPA" means the National Environmental Policy Act of 1969, contained in 42 USC 4321 to 4370(f).
- (28) "Nonattainment area" or "NAA" means any geographic area of the United States which has been designated as nonattainment under Section 107 of the CAA and described in 40 CFR Part 81.
- (29) "NO_x" means oxides of nitrogen.
- (30) "NO₂" means nitrogen dioxide.
- (31) "Pb" means lead.

- (32) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to ten microns.
- (33) "Precursors of a criteria pollutant" means:
- (a) For ozone: NO_x, unless an area is exempted from NO_x requirements under Section 182(f) of the CAA, and volatile organic compounds (VOC); and
 - (b) For PM₁₀: those pollutants described in the PM₁₀ nonattainment area applicable implementation plan as significant contributors to the PM₁₀ levels.
- (34) "Reasonably foreseeable emissions" means projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known to the extent adequate to determine the impact of such emissions; and the emissions are quantifiable, as described and documented by the federal agency based on its own information and after reviewing any information presented to the federal agency.
- (35) "Regionally significant action" means a federal action for which the direct and indirect emissions of any pollutant represent ten per cent or more of a nonattainment or maintenance area's emissions inventory for that pollutant.
- (36) "Regional water or wastewater projects" include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.
- (37) "Total of direct and indirect emissions" means the sum of direct and indirect emissions increases and decreases caused by the federal action; i.e., the "net" emissions considering all direct and indirect emissions. The portion of emissions which are exempt or presumed to conform under paragraph (C), (D), (E) or (F) of rule 3745-102-03 of the Administrative Code are not included in the "total of direct and indirect emissions" except as provided in paragraph (J) of rule 3745-102-03 of the Administrative Code. The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. The segmentation of projects for conformity analyses when emissions are reasonably foreseeable is not permitted by this chapter.
- (38) "USEPA" means the United States environmental protection agency.
- (39) "VOC" means volatile organic compound as defined in paragraph (B)(6) of rule 3745-21-01 of the Administrative Code.
- (C) Incorporation by reference. This chapter includes references to certain matter or materials. The text of the incorporated materials is not included in the regulations

contained in this chapter. The materials are hereby made a part of the regulations in this chapter. For materials subject to change, only the specific version specified in the regulation are incorporated. Material is incorporated as it exists on the effective date of this rule. Except for subsequent annual publication of existing (unmodified) Code of Federal Regulation compilations, any amendment or revision to a referenced document is not incorporated unless and until this rule has been amended to specify the new dates.

(1) Availability. The materials incorporated by reference are available as follows:

- (a) Clean Air Act. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of the Act as amended in 1990 is also available in electronic format at www.epa.gov/oar/caa/. A copy of the Act is also available for inspection and copying at most public libraries and "The State Library of Ohio."
- (b) Code of Federal Regulations. Information and copies may be obtained by writing to: "Superintendent of Documents, Attention: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of the CFR is also available in electronic format at www.access.gpo.gov/nara/cfr/. The CFR compilations are also available for inspection and copying at most public libraries and "The State Library of Ohio."
- (c) Compilation of air pollutant emission factors, AP-42. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of the compilation of air pollutant emission factors, AP-42, is also available in electronic format at <http://www.epa.gov/ttn/chief/ap42/index.html>. The compilation of air pollutant emission factors, AP-42, are also available for inspection and copying at most public libraries and "The State Library of Ohio."
- (d) Comprehensive Environmental Response, Compensation, and Liability Act. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of the Act as amended in 1980 is also available in electronic format at <http://www4.law.cornell.edu/uscode/>. A copy of the Act is also available for inspection and copying at most public libraries and "The State Library of Ohio."
- (e) a. Federal Register. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." It is also available in electronic format at <http://www.gpoaccess.gov/nara/index.html>. A copy of the Register is also

available for inspection and copying at most public libraries and "The State Library of Ohio."

- (f) Federal Transit Act. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of the Act as amended in 1998 is also available in electronic format at <http://www4.law.cornell.edu/uscode/>. A copy of the Act is also available for inspection and copying at most public libraries and "The State Library of Ohio."
- (g) National Environmental Policy Act. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." A copy of the Act is also available for inspection and copying at most public libraries and "The State Library of Ohio."
- (h) United States Code. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of the United States Code is also available in electronic format at <http://www4.law.cornell.edu/uscode/>. The USC compilations are also available for inspection and copying at most public libraries and "The State Library of Ohio."

(2) Incorporated materials

- (a) 23 USC 134; "Metropolitan Planning;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code; as amended August 10, 2005; Pub. L. 109-59, Sec. 6001(a), 119 Stat. 1839.
- (b) 40 CFR Part 50; "National primary and secondary ambient air quality standards;" as published in the July 1, 2005 Code of Federal Regulations.
- (c) 40 CFR Part 51, Appendix W; "Guideline on Air Quality Models;" 70 FR 68228, November 9, 2005.
- (d) 40 CFR Part 51, Subpart W; "Determining Conformity of General Federal Actions to State or Federal Implementation Plans;" 58 FR 63247, Nov. 30, 1993.
- (e) 40 CFR Part 81; "Designation of areas for air quality planning purposes;" as published in the July 1, 2005 Code of Federal Regulations.
- (f) 40 CFR Part 93, Subpart A; "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws;" as published in the July 1, 2005 Code of Federal Regulations.

- (g) 42 USC 4321 to 4370f; "National environmental policy;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.
- (h) 42 USC 7401 to 7671q; "Air Pollution Prevention and Control;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.
- (i) 42 USC 7472; "Initial classifications;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.
- (j) 49 USC 5303; "Metropolitan Planning;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code; as amended August 10, 2005; Pub. L. 109-59, Sec. 6001(a), 119 Stat. 1839.
- (k) "Comprehensive environmental response, compensation, and liability;" contained in 42 USC 9601 to 9675; published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.
- (l) Federal Transit Act, contained in 49 USC 53; "Mass Transportation;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code; as amended August 10, 2005, L. 109-59.
- (m) National Environmental Policy Act of 1969; contained in 42 USC 55; "National Environmental Policy;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.
- (n) Part C of Title I, of the Clean Air Act; contained in 42 USC 7470 to 7492 "Prevention of significant deterioration of air quality;" published January 19, 2004 in Supplement II of the 2000 Edition of United States Code.
- (o) Part D of the Clean Air Act; contained in 42 USC 7501 to 7515; "Plan Requirements for Non Attainment Areas;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code; as amended August 10, 2005, Pub. L. 109-59, sec. 6011(a)-(f), 119 Stat. 1878-1881.
- (p) Section 107 of the Clean Air Act; contained in 42 USC 7408;" Air quality criteria and control techniques;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.
- (q) Section 109 of the Clean Air Act; contained in 42 USC 7409;" National Ambient Air Quality Standards;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.

- (r) Section 110 of the Clean Air Act; contained in 42 USC 7410;" Implementation plans;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.
- (s) Section 110(c) of the Clean Air Act; contained in 42 USC 7410;" Implementation plans;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.
- (t) Section 110(k)(5) of the Clean Air Act, contained in 42 USC 7410;" Implementation plans;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.
- (u) Section 173 of the Clean Air Act; contained in 42 USC 7503;" Permit requirements;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.
- (v) Section 174 of the Clean Air Act; contained in 42 USC 7504; " Planning procedures;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.
- (w) Section 175A of the Clean Air Act; contained in 42 USC 7505a;" Maintenance plans;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.
- (x) Section 176(c) of the Clean Air Act; contained in 42 USC 7506;" Limitation on certain federal assistance;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.
- (y) Section 176(c)(1)(B) of the Clean Air Act; contained in 42 USC 7506;" Limitation on certain federal assistance;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.
- (z) Section 182(g)(1) of the Clean Air Act; contained in 42 USC 7511a; "Plan submissions and requirements;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.
- (aa) Section 182(f) of the Clean Air Act; contained in 42 USC 7511a; "Plan submissions and requirements;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.
- (bb) Section 189(c)(1) of the Clean Air Act; contained in 42 USC 7513a;" Plan provisions and schedules for plan submissions;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.

- (cc) Section 301(d) of the Clean Air Act; contained in 42 USC 7601;" Administration;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.
- (dd) Title 23 of the United States Code; "Highways;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code, as amended June 9, 1998; Pub. L. 105-178, title V, §5101(1), , 112 Stat. 422, Sept. 9, 1966, Pub. L. 89-564, title I, §102(b)(3), , 80 Stat. 735.
- (ee) Title 49 of the United States Code; "Transportation;" published January 19, 2004 in Supplement III of the 2000 Edition of the United States Code.

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