

3745-102-03      **Applicability.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the last paragraph of rule 3745-102-02 of the Administrative Code titled "Incorporation by reference."]

- (A) Conformity determinations for federal actions 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 5303 shall meet the procedures and criteria of Chapter 3745-101 of the Administrative Code, in lieu of the procedures set forth in this chapter.
- (B) For federal actions not covered by paragraph (A) of this rule, a conformity determination by the federal agency taking the action for which the conformity determination is being made is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates in paragraph (B)(1) or (B)(2) of this rule.

(1) For purposes of paragraph (B) of this rule, the following rates apply in NAA's:

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Pollutant	Tons/Year
Ozone (VOC or NO <sub>x</sub> )	
Serious NAAs	50
Severe NAAs	25
Extreme NAAs	10
Other ozone NAAs outside an ozone transport region	100
Marginal and moderate NAAs inside an ozone transport region	
VOC	50
NO <sub>x</sub>	100
Carbon monoxide	
All NAAs	100
SO <sub>2</sub> or NO <sub>2</sub>	
All NAAs	100
PM <sub>10</sub>	
Moderate NAAs	100
Serious NAAs	70
Pb	
All NAAs	25

- (2) For purposes of paragraph (B) of this rule, the following rates apply in maintenance areas:

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Pollutant	Tons/Year
Ozone (NO <sub>x</sub> ), SO <sub>2</sub> or NO <sub>2</sub>	
All maintenance areas	100
Ozone (VOC)	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide	
All maintenance areas	100
PM <sub>10</sub>	
All maintenance areas	100
Pb	
All maintenance areas	25

(C) The requirements of this chapter shall not apply to:

- (1) Actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (B) of this rule.
- (2) The following actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:
  - (a) Judicial and legislative proceedings.
  - (b) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.
  - (c) Rulemaking and policy development and issuance;
  - (d) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.
  - (e) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel.
  - (f) Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.

- (g) The routine, recurring transportation of materiel and personnel.
- (h) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups or for repair or overhaul.
- (i) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.
- (j) With respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands, actions such as relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.
- (k) The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted.
- (l) Planning, studies, and provision of technical assistance.
- (m) Routine operation of facilities, mobile assets and equipment.
- (n) Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.
- (o) The designation of empowerment zones, enterprise communities, or viticultural areas.
- (p) Actions by any of the federal banking agencies or the federal reserve banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States.
- (q) Actions by the board of governors of the federal reserve system or any federal reserve bank to effect monetary or exchange rate policy.
- (r) Actions that implement a foreign affairs function of the United States.

- (s) Actions, or portions thereof, associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of CERCLA, and where the federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.
  - (t) Transfers of real property, including land, facilities, and related personal property from a federal entity to another federal entity and assignments of real property, including land, facilities, and related personal property from a federal entity to another federal entity for subsequent deeding to eligible applicants.
  - (u) Actions by the department of the treasury to effect fiscal policy and to exercise the borrowing authority of the United States.
- (3) The following actions where the emissions are not reasonably foreseeable:
- (a) Initial outer continental shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.
  - (b) Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.
- (4) Individual actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable implementation plan, such as prescribed burning actions which are consistent with a land management plan that has been found to conform to the applicable implementation plan. Such land management plan shall have been found to conform within the past five years.
- (D) Notwithstanding the other requirements of this chapter, a conformity determination is not required for the following federal actions, or portion thereof:
- (1) The portion of an action that includes major new or modified stationary sources that require a permit under the new source review program pursuant to Section 173 of the CAA or the prevention of significant deterioration program under Part C of Title I of the CAA.
  - (2) Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (E) of this rule.
  - (3) Research, investigations, studies, demonstrations, or training, other than those exempted under paragraph (C)(2) of this rule, where no environmental detriment

is incurred or the particular action furthers air quality research, as determined by the Ohio EPA, which is responsible for the applicable implementation plan.

- (4) Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations e.g., hush houses for aircraft engines and scrubbers for air emissions.
  - (5) Direct emissions from remedial and removal actions carried out under CERCLA and associated regulations to the extent such emissions either comply with the substantive requirements of the prevention of significant deterioration/new source review permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.
- (E) Federal actions which are part of a continuing response to an emergency or disaster under paragraph (D)(2) of this rule and which are to be taken more than six months after the commencement of the response to the emergency or disaster under paragraph (D)(2) of this rule are exempt from the requirements of this chapter only if:
- (1) The federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional six months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or
  - (2) For actions which are to be taken after those actions covered by paragraph (E)(1) of this rule, the federal agency makes a new determination as provided in paragraph (E)(1) of this rule.
- (F) Notwithstanding other requirements of this chapter, individual actions or classes of actions specified by individual federal agencies that have met the criteria set forth in either paragraph (G)(1) or (G)(2) of this rule and the procedures set forth in paragraph (H) of this rule are presumed to conform, except as provided in paragraph (J) of this rule.
- (G) The federal agency shall meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (G)(1) or (G)(2) of this rule:
- (1) The federal agency shall clearly demonstrate, using methods consistent with this chapter, that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:
    - (a) Cause or contribute to any new violation of any standard in any area;

- (b) Interfere with provisions in the applicable implementation plan for maintenance of any standard;
  - (c) Increase the frequency or severity of any existing violation of any standard in any area; or
  - (d) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable implementation plan for purposes of:
    - (i) A demonstration of reasonable further progress;
    - (ii) A demonstration of attainment; or
    - (iii) A maintenance plan; or
- (2) The federal agency shall provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (B) of this rule, based, for example, on similar actions taken over recent years.
- (H) In addition to meeting the criteria for establishing exemptions set forth in paragraph (G)(1) or (G)(2) of this rule, the following procedures shall also be complied with to presume that activities will conform:
- (1) The federal agency shall identify through publication in the Federal Register its list of proposed activities that are presumed to conform and the basis for the presumptions;
  - (2) The federal agency shall notify the appropriate USEPA regional office(s), Ohio EPA and local air agencies and, where applicable, the agency designated under Section 174 of the CAA and the MPO and provide at least thirty days for the public to comment on the list of proposed activities presumed to conform;
  - (3) The federal agency shall document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and
  - (4) The federal agency shall publish the final list of such activities in the Federal Register.
- (I) Notwithstanding the other requirements of this chapter, when the total of direct and indirect emissions of any pollutant from a federal action does not equal or exceed the rates specified in paragraph (B) of this rule, but represents ten per cent or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is

defined as a regionally significant action and the requirements of rule 3745-102-01 and of paragraph (B) of rule 3745-102-04 to rule 3745-102-06 of the Administrative Code shall apply for the federal action.

- (J) Where an action presumed to be de minimis under paragraph (C)(1) or (C)(2) of this rule or otherwise presumed to conform under paragraph (F) of this rule is a regionally significant action or where an action otherwise presumed to conform under paragraph (F) of this rule does not in fact meet one of the criteria in paragraph (G)(1) of this rule, that action shall not be considered de minimis or presumed to conform and the requirements of rule 3745-102-01 and of paragraph (B) of rule 3745-102-04 to rule 3745-102-06 of the Administrative Code shall apply for the federal action.
  
- (K) The provisions of this chapter shall apply in all nonattainment and maintenance areas.

Effective: 11/03/2006

R.C. 119.032 review dates: 08/16/2006 and 11/03/2011

CERTIFIED ELECTRONICALLY  
Certification

10/24/2006  
Date

Promulgated Under: 119.03  
Statutory Authority: ORC 3704.03(E)  
Rule Amplifies: ORC 3704.033, 3704.03(E)  
Prior Effective Dates: 8/21/95