

State of Oregon
Department of Environmental Quality

Memorandum

Date: February 1, 2010

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item M, Action item: Transportation conformity rule adoption
February 18-19, 2010 EQC meeting

Why this is important Transportation conformity is the process required by the Clean Air Act that limits vehicle pollution from new transportation projects to an amount that will not exceed national air quality standards. Conformity rules apply only to areas that have violated federal air quality standards.

DEQ recommendation and EQC motion The Department of Environmental Quality recommends that the Environmental Quality Commission adopt proposed modifications that amend and repeal Oregon's transportation conformity rules as presented in Attachment A and submit them to the US Environmental Protection Agency as a revision to Oregon's State Implementation Plan.

Background and need for rulemaking When the Environmental Protection Agency adopted federal transportation conformity rules in 1993, they required states to adopt identical rules as part of their state implementation plans. Since then, EPA has repeatedly modified federal rules, creating increasing differences between state and federal regulations. The differences are typically minor; however, they can prevent transportation planning agencies from taking advantage of new federal provisions that improve administrative efficiency.

In 2008, EPA modified federal rules to require states to adopt only certain parts of the conformity rules as state regulations. Passages that pertain to Oregon-specific conditions, such as those describing interagency consultation and any requirements that are more restrictive than federal minimum standards, must be retained as state rules.

In response to the changed requirements, DEQ is proposing to repeal state rules that duplicate federal measures, allowing the federal conformity rules to govern. This will reduce differences between state and federal regulations and allow transportation planners to apply future changes to the federal rules as soon as EPA approves them. This will also reduce the frequency with which DEQ updates Oregon's conformity rules.

Oregon's transportation planning agencies are interested in using a new provision

in federal rules that extends the maximum period between conformity analyses to four years from the present three-year limit. The four-year interval better coincides with the schedule for other transportation planning duties, and will not weaken the environmental protection of a robust conformity process. Repealing the bulk of state requirements will allow transportation agencies to take advantage of this and other updated provisions immediately.

Effect of rule	This rulemaking would streamline requirements for transportation planning agencies. These include Oregon Department of Transportation, Portland-area Metro, Lane Council of Governments, Mid Willamette Valley Council of Governments, and Rogue Valley Council of Governments. Changes include lengthening the interval between conformity demonstrations from three to four years, allowing a one-year grace period for areas newly subject to conformity and simplifying requirements for localized “hot spot” analyses. The proposed rules allow transportation planners to forego a hot-spot analysis if they can demonstrate a project belongs to a category of projects that has minimal air quality effects. Responsibility for transportation planning in Grants Pass will transfer from Rogue Valley Council of Governments to ODOT at the council’s request.
Commission authority	The commission has authority to take this action under ORS 468.020.
Stakeholder involvement	DEQ developed the proposed rule changes over the course of four meetings of Oregon’s transportation planning agencies and the Federal Highway Administration. DEQ also consulted with EPA, Lane Regional Air Protection Agency and the Oregon Environmental Council. At the end of the consultation process, stakeholders agreed that the changes reflected in this staff report should be proposed for adoption.
Public comment	DEQ held a public comment period from October 20 to November 30, 2009, and included a public hearing in Portland. After the comment period closed, DEQ discovered many intended rule deletions had been inadvertently omitted from the proposed rules provided for comment. DEQ corrected the proposed rules on December 22, 2009 and notified interested parties the agency would accept further comments on this additional information until January 8, 2010. Results of public input are provided in Attachment B.
Key issues	Most of Oregon’s conformity requirements will be the same as federal rules. This proposal, however, contains a provision that would be more environmentally protective than the federal minimum. Specifically, under certain circumstances the EPA’s transportation conformity rules allow a transportation planning agency to shorten an air quality analysis period from 20-plus years into the future to as few as 10 years. Federal rules allow the shorter period to be applied at the election of

the transportation planning agency after consulting with the applicable air pollution agency. DEQ's rulemaking proposal is more restrictive in that the shorter analysis period would be allowed only after consultation with and approval of the applicable air pollution control agency.

DEQ views a long analysis period essential to the purpose of conformity. The core principle of conformity is to ensure that transportation planners evaluate the air pollution generated by new highways or other transportation facilities, and keep vehicle emissions within the level needed to meet national air quality standards. Often the full air quality consequences of a new transportation system or major project cannot be seen in the first ten years. Environmental effects take decades to mature because the average American drives 1.5 percent more each year and Oregon's population is projected to grow 1.4 percent per year until 2030. Highway expansion also intensifies the use of surrounding land, which stimulates additional traffic. For these reasons, DEQ considers it inappropriate to shorten a conformity analysis period without agreement of the relevant air quality agency, either DEQ or the Lane Regional Air Protection Agency.

Next steps If adopted by EQC, DEQ will file the rule modifications with the Oregon Secretary of State and submit them to EPA Region 10 as a revision to the Oregon State Implementation Plan. Upon approval by EPA, DEQ will implement the changes as modifications to Oregon's existing transportation conformity program.

Attachments

- A. Proposed rule revisions
- B. Summary of public comments and agency responses
- C. Advisory committee membership and any written recommendation
- D. Presiding Officer's report on public hearings
- E. Relationship to federal requirements questions
- F. Statement of need and fiscal and economic impact
- G. Land use evaluation statement

Available upon request

- 1. Legal notice of hearing
- 2. Cover memorandum from public notice
- 3. Written comments received

Approved:

Section: _____

Division: _____

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DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 252

TRANSPORTATION CONFORMITY

~~340-252-0020~~

~~Applicability~~

~~(1) Action applicability. Except as provided for in section (3) of this rule or OAR 340-252-0270, conformity determinations are required for:~~

~~(a) 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 a DOT;~~

~~(b) The adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to **23 CFR Part 450** or **49 CFR Part 613** by an MPO or DOT; and~~

~~(c) The approval, funding, or implementation of FHWA/FTA transportation projects or regionally significant projects by a recipient of funds under title 23 U.S.C.~~

~~(2) Geographic Applicability.~~

~~(a) The provisions of this division 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.~~

~~(b) The provisions of this rule apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀).~~

~~(c) The provisions of this rule apply with respect to emissions of the following precursor pollutants:~~

~~(A) Volatile organic compounds and nitrogen oxides in ozone areas;~~

~~(B) Nitrogen oxides in nitrogen dioxide areas; and~~

~~(C) Volatile organic compounds, nitrogen oxides, and PM₁₀ in PM₁₀ areas if:~~

~~(i) The EPA Regional Administrator or the director of the Department of Environmental Quality, or the director of any other regional air authority has made a finding, including a finding in an applicable implementation plan or a 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 DOT; or~~

~~(ii) The applicable implementation plan, or 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 division apply to maintenance areas for 20 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 division shall apply for more than 20 years.~~

~~(3) Limitations.~~

~~(a) Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by DOT may proceed toward implementation without further conformity determinations unless more than three years have elapsed since the most recent major step (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) occurred. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.~~

~~(b) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if three years have elapsed since the most recent major step to advance the project occurred.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as Adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0730~~

340-252-0030

Definitions

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and 340-200-0020 or 340-204-0010, the definition in this rule applies to this division. Terms used but not defined in this rule shall have the meaning given them by the CAA, Titles 23 and 49 U.S.C., other Environmental Protection Agency regulations, or other DOT regulations, in that order of priority.

(1) "Air pollution control agency" has the meaning given that term in section 176(c)(7)(E) of the FCAA.

~~_(1) "Applicable implementation plan" is defined in section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(e), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.~~

~~(2) "CAA" means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).~~

~~(3) "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.~~

~~(4) "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.~~

~~(25)~~ "Consult" or "consultation" means that the party or parties responsible for consultation as established in OAR 340-252-0060 shall provide all appropriate information necessary to making a conformity determination and, prior to making a conformity determination, except with respect to a transportation plan or TIP revision which merely adds or deletes exempt projects ~~listed in OAR 340-252-0270~~, consider the views of such parties and provide a timely, written response to those views. Such views and written responses shall be included in the record of decision or action.

~~_(6) "Control strategy implementation plan" or "control strategy implementation plan revision" is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA §§ 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b), for nitrogen dioxide).~~

~~(37) "DEQ" means the Department of Environmental Quality.~~

~~(8) "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.~~

~~(9) "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.~~

~~(10) "DOT" means the United States Department of Transportation.~~

~~(11) "EPA" means the Environmental Protection Agency.~~

~~(12) "FHWA" means the Federal Highway Administration of DOT.~~

~~(13) "FHWA/FTA project" for the purpose of this division, is 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.~~

~~(14) "FTA" means the Federal Transit Administration of DOT.~~

~~(15) "Forecast period" with respect to a transportation plan is the period covered by the transportation plan pursuant to **23 CFR Part 450**.~~

~~(16) "Highway project" is 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 must be defined sufficiently to:~~

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

~~(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.~~

~~(17) "Horizon year" is a year for which the transportation plan describes the envisioned transportation system in accordance with OAR 340-252-0070.~~

~~(18) "Hot spot analysis" is 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.~~

~~(19) "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.~~

~~(20) "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.~~

~~(21) "Lead Planning Agency" means an agency designated pursuant to section 174 of the Clean Air Act as responsible for developing an applicable implementation plan.~~

~~(22) "Maintenance area" means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under § 175A of the CAA, as amended.~~

~~(23) "Maintenance plan" means an implementation plan adopted by the Environmental Quality Commission, endorsed by the Governor and submitted to EPA under section 175(a) of the CAA, as amended.~~

~~(24) "Maximum priority" means that all possible actions must be taken to shorten the time periods necessary to complete essential steps in TCM implementation—for example, by increasing the funding rate—even though timing of other projects may be affected. It is not permissible to have prospective discrepancies with the SIP's TCM implementation schedule due to lack of funding in the TIP, lack of commitment to the project by the sponsoring agency, unreasonably long periods to complete future work due to lack of staff or other agency resources, lack of approval or consent by local governmental bodies, or failure to have applied for a permit where necessary work preliminary to such application has been completed. However, where statewide and metropolitan funding resources and planning and management capabilities are fully consumed, within the flexibilities of the Intermodal Surface Transportation Efficiency Act (ISTEA), with responding to damage from natural disasters, civil unrest, or terrorist acts, TCM implementation can be determined to be timely without regard to the above, provided reasonable efforts are being made.~~

~~(25) "Metropolitan area" means any area where a metropolitan planning organization has been designated.~~

~~(26) "Metropolitan planning organization" or "MPO" is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making.~~

~~(27) "Milestone" has the meaning given in § 182(g)(1) and § 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.~~

~~(28) "Motor vehicle emissions budget" is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.~~

~~(29) "National ambient air quality standards" or "NAAQS" are those standards established pursuant to § 109 of the CAA.~~

~~(30) "NEPA" means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).~~

~~(31) "NEPA process completion" with respect to FHWA or FTA, means the point at which there is a specific action to make a 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.~~

~~(32) "Nonattainment area" means any geographic region of the United States which has been designated as nonattainment under § 107 of the CAA for any pollutant for which a national ambient air quality standard exists.~~

~~(433)~~ "ODOT" means the Oregon Department of Transportation.

~~(534)~~ "Policy level official" means elected officials, and management and senior staff level employees.

~~(35) "Project" means a highway project or transit project.~~

~~(36) "Protective finding" means a determination by EPA that a submitted control strategy implementation plan revision 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.~~

~~(37) "Recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws" means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Laws 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.~~

(638) "Regional air authority" means a regional air authority established pursuant to ORS 468A.105.

~~(39) "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 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, including at a minimum:~~

~~(a) All principal arterial highways;~~

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

~~(c) Any other facilities determined to be regionally significant through interagency consultation pursuant to OAR 340-252-0060.~~

~~[NOTE: A project that is included in the modeling of an area's transportation network may not, subject to interagency consultation, be considered regionally significant because it is not on a facility which serves regional transportation needs.]~~

~~(40) "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.~~

(744) "Scope" means "design scope" as defined in section (9) of this rule 40 CFR 93.101 when the term follows "design concept and..."

~~(42) "Standard" means a national ambient air quality standard.~~

~~(43) "Transit" is 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.~~

~~(44) "Transit project" is 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 must 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.~~

~~(45) "Transportation control measure" or "TCM" is 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 CAA, 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 first sentence of this definition, vehicle technology based, fuel based, and maintenance based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this division.~~

~~(46) "Transportation improvement program" or "TIP" means a staged, multiyear, 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.~~

~~(47) "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.~~

~~(48) "Transportation project" means a roadway project or a transit project.~~

~~(49) "VMT" means vehicle miles traveled.~~

~~(50) "Written commitment" for the purposes of this division means a written commitment that includes a description of the action to be taken; 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.~~

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as Adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0720

340-252-0040

Priority

~~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.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as Adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

Stat. Auth.: ORS 468A.035

Stats. Implemented: ORS 468A.035

Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0740

340-252-0050

Frequency of Conformity Determinations

~~(1) Conformity determinations and conformity redeterminations for transportation plans, TIPs, FHWA/FTA projects, and regionally significant projects approved or adopted by a recipient of funds under title 23 U.S.C. must be made according to the requirements of this rule and the applicable implementation plan.~~

~~(2) Frequency of conformity determinations for transportation plans.~~

~~(a) Each new transportation plan must be demonstrated to conform before the transportation plan is approved by the MPO or accepted by DOT. Each new transportation plan must be demonstrated to conform in accordance with the consultation requirements in OAR 340-252-0060.~~

~~(b) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by an MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in OAR 340-252-0270. The conformity determination must be based on the transportation plan and the revision taken as a whole, and must be made in accordance with the consultation provisions of 340-252-0060.~~

~~(c) The MPO and DOT must determine the conformity of the transportation plan no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, the existing conformity determination will lapse.~~

~~(3) Frequency of conformity determinations for transportation improvement programs:~~

~~(a) A new TIP must be demonstrated to conform before the TIP is approved by the MPO or accepted by DOT. The new TIP must be demonstrated to conform in accordance with the consultation requirements in OAR 340-252-0060.~~

~~(b) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in OAR 340-252-0270 or 340-252-0280. The TIP amendment must be demonstrated to conform in accordance with the consultation requirements in 340-252-0060.~~

~~(c) The MPO and DOT must determine the conformity of the TIP no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, the existing conformity determination will lapse.~~

~~(d) After an MPO adopts a new or revised transportation plan, conformity of the TIP must be redetermined by the MPO and DOT within six months from the date of DOT's conformity determination for the transportation plan, unless the new or revised plan merely adds or deletes exempt projects listed in OAR 340-252-0270 or 340-252-0280. Otherwise, the existing conformity determination for the TIP will lapse.~~

~~(4) Projects. FHWA/FTA transportation projects must be found to conform before they are adopted, accepted, approved, or funded. In the case of recipients of funds under title 23 U.S.C. or the Federal Transit Laws, all regionally significant projects must be demonstrated to conform before they are approved or adopted. Conformity must be redetermined for any FHWA/FTA project or any regionally significant project adopted or approved by a recipient of funds under Title 23 U.S.C. if three years have elapsed since the most recent major step to advance the project (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) occurred.~~

~~(5) Triggers for transportation plan and TIP conformity determinations. Conformity of existing transportation plans and TIPS must be redetermined within 18 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:~~

~~(a) November 24, 1993;~~

~~(b) 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;~~

~~(c) EPA approval of a control strategy implementation plan revision or maintenance plan establishing a motor vehicle emissions budget;~~

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

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

~~(6) Additional triggers for transportation plan and TIP conformity determinations. Conformity of existing transportation plans and TIPS must be redetermined within 24 months after the EQC adopts a SIP revision which adds TCMs or the next transportation plan approval (whichever comes first) 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.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0750~~

340-252-0060

Consultation

(1) General:

(a) This section provides procedures for interagency consultation (Federal, State, and local) and resolution of conflicts. Consultation shall be undertaken by MPOs, the Oregon Department of Transportation, affected local jurisdictions, and United States Department of Transportation USDOT before making conformity determinations and in developing regional transportation plans and transportation improvement programs. Consultation shall be undertaken by a lead planning agency, the Department of Environmental Quality, the Lane Regional Air ~~Pollution Authority~~ Protection Agency (for actions in Lane County which are subject to this division), or any other regional air authority, and United States Environmental Protection Agency EPA in developing applicable implementation plans.

(b) The lead planning agency, the Department of Environmental Quality, the Lane Regional Air ~~Pollution Authority~~ Protection Agency for Lane County, or any other

regional air authority, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development, amendment or revision (except administrative amendments or revisions) of an applicable implementation plan including, the motor vehicle emissions budget. The MPO, ~~ODOT~~ Oregon Department of Transportation, or any other party responsible for making conformity determinations pursuant to this rule, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the transportation plan, the TIP, and any determinations of conformity under this rule. The project sponsor shall be responsible for assuring the conformity of FHWA/FTA projects and regionally significant projects approved or adopted by a recipient of funds under title 23.

(c) In addition to the lead agencies identified in subsection (b), other agencies entitled to participate in any interagency consultation process under OAR 340-252-0060 include the Oregon Department of Transportation, both headquarters and each affected regional or district office, each affected MPO, the Federal Highway Administration regional office in Portland and State division office in Salem, the Federal Transit Administration regional office, the Department of Environmental Quality, both headquarters and each affected regional office, any affected regional air authority, the United States Environmental Protection Agency, both headquarters and each affected regional or district office, and any other organization within the State responsible under State law for developing, submitting or implementing transportation-related provisions of an implementation plan, any local transit agency, and any city or county transportation or air quality agency.

(d) Specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:

(A) The lead planning agency, the Department of Environmental Quality, the Lane Regional Air ~~Pollution Authority~~ Protection Agency, or any other regional air authority, shall be responsible for developing:

- (i) Emissions inventories;
- (ii) Emissions budgets;
- (iii) Attainment and maintenance demonstrations;
- (iv) Control strategy implementation plan revisions; and
- (v) Updated motor vehicle emissions factors.

(B) Unless otherwise agreed to in a Memorandum of Understanding between the affected jurisdictions and the Department of Environmental Quality, the Department of Environmental Quality shall be responsible for developing the transportation control

measures to be included in SIPs in ~~PM₁₀~~-nonattainment or maintenance areas, except ~~Oakridge Lane County~~.

(C) The Lane Regional Air ~~Pollution Authority~~ Protection Agency shall be responsible for developing transportation control measures for PM₁₀ in ~~Oakridge Lane County~~.

(D) The MPO shall be responsible for:

(i) Developing transportation plans and TIPs, and making corresponding conformity determinations;

(ii) Making conformity determinations for the entire nonattainment or maintenance area including areas beyond the boundaries of the MPO where no agreement is in effect as required by **23 CFR § 450.310(f)**;

(iii) Monitoring regionally significant projects;

(iv) Developing and evaluating TCMs in ~~ozone and/or carbon monoxide~~ nonattainment and/or maintenance areas;

(v) Providing technical and policy input on emissions budgets;

(vi) Performing transportation modeling, regional emissions analyses and documenting timely implementation of TCMs as required for determining conformity;

(vii) Distributing draft and final project environmental documents which have been prepared by the MPO to other agencies.

(E) The Oregon Department of Transportation (~~ODOT~~) shall be responsible for:

(i) Providing technical input on proposed revisions to motor vehicle emissions factors;

(ii) Distributing draft and final project environmental documents prepared by ODOT to other agencies;

(iii) Convening air quality technical review meetings on specific projects when requested by other agencies or, as needed;

(iv) Convening interagency consultation meetings required for purposes of making conformity determinations in non-metropolitan nonattainment or maintenance areas; ~~except Grants Pass~~;

(v) Making conformity determinations in non-metropolitan nonattainment or maintenance area; ~~except Grants Pass~~.

~~(F) In addition to the responsibilities of MPOs described in paragraph (1)(d)(D) above, the Rogue Valley Council of Governments shall be responsible for:~~

~~(i) Convening interagency consultation meetings required for purposes of making conformity determinations in Grants Pass;~~

~~(ii) Making conformity determinations in Grants Pass.~~

~~(FG)~~ The project sponsor shall be responsible for;

(i) Assuring project level conformity including, where required by this rule, localized air quality analysis;

(ii) Distributing draft and final project environmental documents prepared by the project sponsor to other agencies.

~~(GH) FHWA and FTA~~ The Federal Highway Administration and Federal Transit Administration shall be responsible for assuring timely action on final findings of conformity, after consultation with other agencies as provided in this section and **40 CFR § 93.105**.

~~(HI) EPA~~ United State Environmental Protection Agency shall be responsible for:

(i) Reviewing and approving updated motor vehicle emissions factors; and

(ii) Providing guidance on conformity criteria and procedures to agencies in interagency consultation.

~~(IJ)~~ Any agency, by mutual agreement with another agency, may take on a role or responsibility assigned to that other agency under this rule.

~~(JK)~~ In metropolitan areas, any state or local transportation agency, or transit agency shall disclose regionally significant projects to the MPO standing committee established under OAR 340-252-0060(2)(b) in a timely manner.

(i) Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: adoption or amendment of a local jurisdiction's transportation system plan to include a proposed project, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract for final design or construction of the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with final design, permitting or construction of the project, or any approval needed for any facility that is dependent on the completion of the regionally significant project.

(ii) To help assure timely disclosure, the sponsor of any potentially regionally significant project shall disclose to the MPO annually on or before July 1.

(iii) In the case of any regionally significant project that has not been disclosed to the MPO and other interested agencies participating in the consultation process in a timely manner, such regionally significant project shall be deemed not to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purposes of 40 CFR §93.121-OAR 340-252-0220.

~~(KL)~~ In non-metropolitan areas, ~~except Grants Pass~~, any state or local transportation agency, or transit agency shall disclose regionally significant projects to Oregon Department of Transportation~~ODOT~~ in a timely manner.

(i) Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: adoption or amendment of a local jurisdiction's transportation system plan to include a proposed project, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract for final design or construction of the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with final design, permitting or construction of the project, or any approval needed for any facility that is dependent on the completion of the regionally significant project.

(ii) To help assure timely disclosure, the sponsor of any potentially regionally significant project shall disclose to Oregon Department of Transportation~~ODOT~~ as requested. Requests for disclosure shall be made in writing to any affected state or local transportation or transit agency.

~~(M) In Grants Pass, any state or local transportation agency, or transit agency shall disclose regionally significant projects to RVCOG in a timely manner.~~

~~(i) Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: adoption or amendment of a local jurisdiction's transportation system plan to include a proposed project, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract for final design or construction of the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with final design, permitting or construction of the project, or any approval needed for any facility that is dependent on the completion of the regionally significant project.~~

~~(ii) To help assure timely disclosure, the sponsor of any potentially regionally significant project shall disclose to RVCOG as requested. Requests for disclosure shall be made in writing to any affected state or local transportation or transit agency.~~

(2) Interagency consultation: specific processes.

(a) State Implementation Plan development.

(A) It shall be the affirmative responsibility of the Department of Environmental Quality, the Lane Regional Air Protection Agency, or any other regional air authority agency with the responsibility for preparing or revising a State Implementation Plan, except for administrative amendments or revisions, to initiate the consultation process by notifying other participants and convening a working group made up of representatives of each affected agency in the consultation process including representatives of the public, as appropriate. Such working group shall be chaired by a representative of the convening agency, unless the group by consensus selects another chair. The working group shall make decisions by majority vote. Such working group shall begin consultation meetings early in the process of decision on the final SIP, and shall ~~prepare all review~~ drafts of the final SIP, the emissions budget, and major supporting documents, or appoint the representatives or agencies that will ~~prepare review~~ such drafts. Such working group shall be made up of policy level officials, and shall be assisted by such technical committees or technical engineering, planning, public works, air quality, and administrative staff from the member agencies as the working group deems appropriate. The chair, or his/her designee, shall set the agenda for meetings and assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.

(B) Regular consultation on development or amendment of an implementation plan shall include meetings of the working group at regularly scheduled intervals, no less frequently than quarterly. In addition, technical meetings shall be convened as necessary.

(C) Each lead agency with the responsibility for preparing the SIP subject to the interagency consultation process, shall confer through the working group process with all other agencies identified under subsection (1)(c) of this rule with an interest in the document to be developed, provide all appropriate information to those agencies needed for meaningful input, and, consider the views of each such agency and respond to substantive comments in a timely, substantive written manner prior to making a recommendation to the Environmental Quality Commission for a final decision on such document. Such views and written response shall be made part of the record of any decision or action.

(D) The working group may appoint subcommittees to address specific issues pertaining to SIP development. Any recommendations of a subcommittee shall be considered by the working group.

(E) Meetings of the working group shall be open to the public. The agency with the responsibility of preparing the SIP shall provide timely written notification of working group meetings to those members of the public who have requested such notification. In addition, reasonable efforts shall be made to identify and provide timely written notification to interested parties.

(b) Metropolitan Areas. There shall be a standing committee for purposes of consultation required under this rule by an MPO. The standing committee shall advise the MPO. The committee shall include representatives from state and regional air quality planning agencies and State and local transportation and transit agencies. The standing committee shall consult with the United States Environmental Protection Agency-EPA and the United States Department of TransportationUSDOT. If not designated by committee bylaws, the standing committee shall select its chair by majority vote.

(A) For MPOs designated prior to the effective date of this rule, the following standing committees are designated for purposes of interagency consultation required by this rule:

(i) Lane Council of Governments: Transportation Planning Committee;

(ii) Salem-Keizer Area Transportation Study: Technical Advisory Committee;

(iii) Metro: Transportation Policy Alternatives Committee;

(iv) Rogue Valley Council of Governments: Technical Advisory Committee.

(B) Any MPO designated an air quality nonattainment or maintenance area subsequent to the effective date of this rule shall establish a standing committee to meet the requirements of this rule.

(C) The standing committee shall hold meetings at least quarterly. The standing committee shall make decisions by majority vote.

(D) The standing committee shall be responsible for consultation on:

(i) Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis, in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel;

(ii) Determining whether a project's design concept and scope have changed significantly since the plan and TIP conformity determination;

(iii) Evaluating whether projects otherwise exempted from meeting the requirements of this rule should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(iv) Making a determination, as required by ~~OAR 340-252-0140(3)(a)~~ 40 CFR § 93.113, whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs; this consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Identifying, as required by ~~OAR 340-252-0240(4)~~ 40 CFR § 93.123, projects located at sites in PM₁₀ or PM_{2.5} nonattainment or maintenance areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM₁₀ or PM_{2.5} hot-spot analysis;

(vi) Forecasting vehicle miles traveled, and any amendments thereto;

(vii) Making a determination, as required by ~~OAR 340-252-0220(2)~~ 40 CFR § 93.121, whether the project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and whether the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;

(viii) Determining whether the project sponsor or MPO has demonstrated that the requirements of ~~OAR 340-252-0170, 340-252-0190, and 340-252-0200~~ 40 CFR § 93.116, 40 CFR § 93.118, and 40 CFR § 93.119 are satisfied without a particular mitigation or control measure, as provided in ~~OAR 340-252-0260(4)~~ 40 CFR § 93.125;

(ix) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in ~~OAR 340-252-0050~~ 40 CFR § 93.104;

(x) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment or maintenance areas or air basins;

(xi) Assuring that plans for construction of regionally significant projects which are not FHWA/FTA projects, including projects for which alternative locations, design concept and scope, or the no-build option are still being considered, are disclosed to the MPO on a regular basis, and assuring that any changes to those plans are immediately disclosed;

(xii) The design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g., household/travel transportation surveys);

(xiii) Development of transportation improvement programs;

(xiv) Development of regional transportation plans;

(xv) Establishing appropriate public participation opportunities for project-level conformity determinations required by this division, in the manner specified by **23 CFR Part 450**; and

(xvi) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in ~~OAR 340-252-0270 or 340-252-0280~~ 40 CFR § 93.126 and 40 CFR § 93.127.

(E) The chair of each standing committee, or his/her designee, shall set the agenda for all meetings. The chair of each standing committee shall assure that all agendas, and relevant documents and information are supplied to all participants in the consultation process in a timely manner prior to standing committee meetings which address any issues described in paragraph (2)(b)(D) of this rule.

(F) Such standing committees shall begin consultation meetings early in the process of decision on the final document, and shall review all drafts of the final document and major supporting documents. The standing committee shall consult with EPA and USDOT.

(G) The MPO shall confer with the standing committee and shall consult with all other agencies identified under subsection (1)(c) of this rule with an interest in the document to be developed, shall provide all appropriate information to those agencies needed for meaningful input, and consider the views of each such agency. The MPO shall provide draft conformity determinations to standing committee members and shall allow a minimum of 30 days for standing committee members to comment. The 30 day comment period for standing committee members may occur concurrently with the public comment period. The MPO shall respond to substantive comments raised by a standing committee member in a timely, substantive written manner at least 7 days prior to any final decision by the MPO on such document. Such views and written response shall be made part of the record of any decision or action.

(H) The standing committee may, where appropriate, appoint a subcommittee to develop recommendations for consideration by the full committee.

(I) Meetings of the standing committee shall be open to the public. The MPO shall provide timely written notification of standing committee meetings to those members of the public who have requested such notification. In addition, reasonable efforts shall be made to identify and provide timely written notification to interested parties.

(c) An MPO, or any other party responsible for developing Transportation Control Measures, shall consult with affected parties listed in subsection (1)(c) in developing TCMs for inclusion in an applicable implementation plan.

(d) Non-metropolitan areas.

(A) In non-metropolitan areas the following interagency consultation procedures shall apply, unless otherwise agreed to by the affected parties in a Memorandum of Understanding, or specified in an applicable implementation plan:

(B) In each non-metropolitan nonattainment or maintenance area, ~~except in Grants Pass,~~ the Oregon Department of Transportation shall facilitate a meeting of the affected agencies listed in subsection (1)(c) of this rule prior to making conformity determinations to:

(i) Determine which minor arterials or other transportation projects shall be considered "regionally significant";

(ii) Determine which projects have undergone significant changes in design concept and scope since the regional emissions analysis was performed;

(iii) Evaluate whether projects otherwise exempted from meeting the requirements of this rule should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(iv) Make a determination, as required by ~~OAR 340-252-0140(3)(a)~~ 40 CFR § 93.113, whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs; this consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Identify, as required by ~~OAR 340-252-0240(4)~~ 40 CFR § 93.123 projects located at sites in PM₁₀ ~~or PM_{2.5}~~ nonattainment or maintenance areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM₁₀ ~~or PM_{2.5}~~ hot-spot analysis;

(vi) Confer on the forecast of vehicle miles traveled, and any amendments thereto;

(vii) Determine whether the project sponsor has demonstrated that the requirements of ~~OAR 340-252-0170, 340-252-0190, and 340-252-0200~~ 40 CFR § 93.116, 40 CFR §

93.118, and 40 CFR § 93.119 are satisfied without a particular mitigation or control measure, as provided in ~~OAR 340-252-0260(d)~~;

(viii) Evaluate events which will trigger new conformity determinations in addition to those triggering events established in ~~OAR 340-252-0050~~40 CFR § 93.104;

(ix) Assure that plans for construction of regionally significant projects which are not ~~Federal Highway Administration/Federal Transit Administration~~FHWA/FTA projects, including projects for which alternative locations, design concept and scope, or the no-build option are still being considered, are disclosed on a regular basis, and assuring that any changes to those plans are immediately disclosed.

(x) Confer on the design, schedule, and funding of research and data collection efforts and transportation model development (e.g., household/travel transportation surveys).

(xi) Establish appropriate public participation opportunities for project-level conformity determinations required by this rule in the manner specified by **23 CFR Part 450**;

(xii) Provide notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in ~~OAR 340-252-0270 or 340-252-0280~~40 CFR § 93.126 and 40 CFR § 93.127; and

(xiii) Choose conformity tests and methodologies for non-metropolitan nonattainment and maintenance areas, as required by ~~OAR 340-252-0100(7)(b)(C)~~40 CFR § 93.109.

~~_(C) Notwithstanding paragraph (2)(d)(B) of this rule, the Rogue Valley Council of Governments shall be responsible for facilitating a meeting of the affected agencies listed in subsection (1)(c) of this rule prior to making conformity determinations for Grants Pass, Oregon for the purpose of consulting on the items listed in paragraph (2)(d)(B) of this rule.~~

~~(C)~~ (D) The Oregon Department of Transportation, ~~or the Rogue Valley Council of Governments (RVCOG) in Grants Pass,~~ shall consult with all other agencies identified under subsection (1)(c) of this rule with an interest in the document to be developed, shall provide all appropriate information to those agencies needed for meaningful input, and consider the views of each such agency. All draft regional conformity determinations as well as, supporting documentation shall be made available to agencies with an interest in the document and those agencies shall be given at least 30 days to submit comments on the draft document. Oregon Department of Transportation~~ODOT, or RVCOG in Grants Pass,~~ shall respond to substantive comments received from other agencies in a timely, substantive written manner at least 7 days prior to any final decision on such document. Such views and written response shall be made part of the record of any decision or action.

(DE) Meetings hereby required shall be open to the public. Timely written notification of any meetings relating to conformity shall be provided to those members of the public who have requested such notification. In addition, reasonable efforts shall be made to identify and provide timely written notification to interested parties.

(EF) If no transportation projects are proposed for the upcoming fiscal year, there is no obligation to facilitate the annual meeting required by paragraphs (2)(d)(B) & (C) of this rule.

(FG) The meetings required by paragraphs (2)(d)(B)&(C) of this rule may take place using telecommunications equipment, where appropriate.

(e) An MPO or Oregon Department of Transportation ~~ODOT~~ shall facilitate an annual statewide meeting, unless otherwise agreed upon by Oregon Department of Transportation ~~ODOT~~, Oregon Department of Environmental Quality ~~DEQ~~ and the MPOs, of the affected agencies listed in subsection (1)(c) to review procedures for regional emissions and hot-spot modeling.

(A) The members of each agency shall annually jointly review the procedures used by affected MPOs and agencies to determine that the requirements of OAR 340-252-023040 ~~CFR § 93.122~~ -are being met by the appropriate agency.

(B) An MPO or Oregon Department of Transportation ~~ODOT~~ shall facilitate a statewide meeting of parties listed in subsection (1)(c) of this rule to receive comment on the United States Environmental Protection Agency ~~EPA~~ guidelines on hot-spot modeling, to determine the adequacy of the guidelines, and to make recommendations for improved hot-spot modeling to the United States Environmental Protection Agency ~~EPA~~ Regional Administrator. Oregon Department of Environmental Quality ~~DEQ~~, LRAPA Lane Regional Air Protection Agency, or any other regional air authority, may make recommendations for improved hot-spot modeling guidelines to the United States Environmental Protection Agency ~~EPA~~ Regional Administrator with the concurrence of Oregon Department of Transportation ~~ODOT~~. Oregon Department of Transportation ~~ODOT~~ may make recommendations for improved hot-spot modeling guidelines to the United States Environmental Protection Agency ~~EPA~~ Regional Administrator with the concurrence of the affected air quality agency (e.g., Oregon Department of Environmental Quality ~~DEQ~~, LRAPA Lane Regional Air Protection Agency or any other regional air authority).

(C) The MPO or Oregon Department of Transportation ~~ODOT~~ shall determine whether the transportation modeling procedures are in compliance with the modeling requirements of OAR 340-252-023040 ~~CFR § 93.122~~. The Oregon Department of Environmental Quality ~~DEQ~~ or LRAPA Lane Regional Air Protection Agency (in Lane County), or any other regional air authority, shall determine whether the modeling procedures are in compliance with the air quality emissions modeling requirements of OAR 340-252-023040 ~~CFR § 93.122~~.

(D) The affected agencies shall evaluate and choose a model (or models) and associated methods and assumptions to be used in Hot-Spot Analyses and regional emissions analyses.

(f) ~~The Federal Highway Administration and Federal Transit Administration~~ FHWA and FTA will, for any proposed or anticipated transportation improvement program (TIP) or transportation plan conformity determination, provide a draft conformity determination to ~~the Environmental Protection Agency~~ EPA for review and comment. ~~The Federal Highway Administration and Federal Transit Administration~~ FHWA and FTA shall allow a minimum of 14 days for EPA to respond. ~~The United States Department of Transportation~~ DOT shall respond in writing to any significant comments raised by ~~the Environmental Protection Agency~~ EPA before making a final decision. In addition, where ~~the Federal Highway Administration and Federal Transit Administration~~ FHWA/FTA request any new or revised information to support a TIP or transportation plan conformity determination, ~~The Federal Highway Administration and Federal Transit Administration~~ FHWA/FTA shall either return the conformity determination for additional consultation under subsections (2)(b) or (2)(d) of this rule, or ~~the Federal Highway Administration and Federal Transit Administration~~ FHWA/FTA shall provide the new information to the agencies listed in subsection (1)(c) of this rule for review and comment. Where ~~the Federal Highway Administration and Federal Transit Administration~~ FHWA/FTA chooses to provide the new or additional information to the affected agencies listed in subsection (1)(c), ~~the Federal Highway Administration and Federal Transit Administration~~ FHWA and FTA shall allow for a minimum of 14 days to respond to any new or revised supporting information; ~~the United States Department of Transportation~~ DOT shall respond in writing to any significant comments raised by the agencies consulted on the new or revised supporting information before making a final decision.

(g) Each agency subject to an interagency consultation process under this rule (including any Federal agency) shall provide each final document that is the product of such consultation process, together with all supporting information that has not been the subject of any previous consultation required by this rule, to each other agency that has participated in the consultation process within 14 days of adopting or approving such document or making such determination. Any such agency may supply a checklist of available supporting information, which such other participating agencies may use to request all or part of such supporting information, in lieu of generally distributing all supporting information.

(h) It shall be the affirmative responsibility of the agency with the responsibility for preparing a transportation plan or TIP revision which merely adds or deletes exempt projects listed in OAR ~~340-252-0270-40~~ CFR § 93.126 to initiate the process by notifying other participants early in the process of decision on the final document and assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.

(i) A meeting that is scheduled or required for another purpose may be used for the purposes of consultation required by this rule if the conformity consultation purpose is identified in the public notice for the meeting.

(j) It shall be the affirmative responsibility of a project sponsor to consult with the affected transportation and air quality agencies prior to making a project level conformity determination required by this rule.

(3) Resolving conflicts.

(a) Any conflict among State agencies or between State agencies and an MPO shall be escalated to the Governor if the conflict cannot be resolved by the heads of the involved agencies. In the first instance, such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.

(b) A State agency, regional air authority, or MPO has 14 calendar days to appeal a determination of conformity, SIP submittal, or other decision under this division, to the Governor after the State agency, regional air authority, or MPO has been notified of the resolution of all comments on such proposed determination of conformity, SIP submittal, or decision. If an appeal is made to the Governor, the final conformity determination, SIP submittal, or policy decision must have the concurrence of the Governor. The appealing agency must provide notice of any appeal under this subsection to the lead agency. If an action is not appealed to the Governor within 14 days, the lead agency may proceed.

(c) The Governor may delegate the role of hearing any such appeal under this section and of deciding whether to concur in the conformity determination to another official or agency within the State, but not to the head or staff of the State air quality agency or any local air quality agency, the State department of transportation, a State transportation commission or board, the Environmental Quality Commission, any agency that has responsibility for only one of these functions, or an MPO.

(4) Public consultation procedures. Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with these requirements and those of **23 CFR 450.316(b)**. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in **49 CFR 7.95**. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or

TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0760

340-252-0070

~~Content of Transportation Plans~~

~~(1) Transportation plans adopted after January 1, 1997 in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas. If the metropolitan planning area contains an urbanized area population greater than 200,000, the transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.~~

~~(a) The agency or organization developing the transportation plan, after consultation pursuant to OAR 340-252-0060, may choose any years to be horizon years, subject to the following restrictions:~~

~~(A) Horizon years may be no more than 10 years apart;~~

~~(B) The first horizon year may be no more than 10 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.~~

~~(b) 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 OAR 340-252-0060;~~

~~(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 modifications 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 that are sufficient for modeling of their transit ridership. Additions and modifications to the transportation network shall be described sufficiently 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.~~

~~(2) Moderate areas reclassified to serious. Ozone or CO nonattainment areas which are reclassified from moderate to serious and have an urbanized population greater than 200,000 must meet the requirements of subsection (1)(a) of this rule within two years from the date of reclassification.~~

~~(3) Transportation plans for other areas. Transportation plans for other areas must meet the requirements of subsection (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, the transportation system envisioned for the future must be sufficiently described within the transportation plans so that a conformity determination can be made according to the criteria and procedures of OAR 340-252-0100 through 340-252-0200.~~

~~(4) Savings. The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.~~

Timeframe of Conformity Determinations

Any election by an MPO to shorten the timeframe of a conformity determination under 40 CFR 93.106(d) requires approval of the Department of Environmental Quality or the Lane Regional Air Protection Agency, as applicable. A shortened timeframe may be appropriate, for example, when projected future emissions fail to meet a Motor Vehicle Emissions Budget (MVEB) due to calculation methods that are inconsistent with the methods used to determine the MVEB. Such circumstances may exist for example, when emissions estimation methods have changed from those used to establish the MVEB.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0770

~~340-252-0080~~

~~Relationship of Transportation Plan and TIP Conformity with the NEPA Process~~

~~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. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in OAR 340-252-0100 through 340-252-0200 for projects not from a TIP before NEPA process completion.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0780~~

~~340-252-0090~~

~~Fiscal Constraints for Transportation Plans and TIPs~~

~~Transportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at **23 CFR Part 450** in order to be found in conformity.~~

~~Table 1-Conformity Criteria~~

~~All Actions at all times:~~

OAR 340-252-0110	Latest planning assumptions.
OAR 340-252-0120	Latest emissions model.
OAR 340-252-0130	Consultation.

~~Transportation Plan:~~

OAR 340-252-0140(2)	TCMs
OAR 340-252-0190 or	Emissions budget or Emission
OAR 340-252-200	reduction.

TIP:

OAR 340-252-0140(3)	TCMs.
OAR 340-252-0190	Emissions budget or Emission
or OAR 252-0200	reduction.

Project (From a Conforming Plan and TIP):

OAR 340-252-0150	Currently conforming plan and TIP.
OAR 340-252-0160	Project from a conforming plan and
	TIP.
OAR 340-252-0170	CO and PM₁₀ hot spots.
OAR 340-252-0180	PM₁₀ control measures.

Project (Not From a Conforming Plan and TIP):

OAR 3402520140	TCMs.
OAR 3402520150	Currently conforming plan and TIP.
OAR 3402520170	CO and PM₁₀ hot spots.
OAR 3402520180	PM₁₀ control measures.
OAR 3402520190	Emissions budget or Emission
	reduction.

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0790~~

~~340-252-0100~~

~~Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects: General~~

~~(1) In order for each transportation plan, program, FHWA/FTA project, and regionally significant project approved or adopted by a recipient of funds under title 23 U.S.C. to be found to conform, the MPO and DOT must demonstrate that the applicable criteria and procedures in this division are satisfied, and the MPO and DOT must comply with all applicable conformity requirements of implementation plans, and of court orders for the area which pertain specifically to conformity. 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.~~

~~(2) **Table 1** indicates the criteria and procedures in OAR 340-252-0110 through 340-252-0200 which apply for transportation plans, TIPS, and FHWA/FTA projects. Sections (3) through (6) of this rule explain when the budget, emission reduction, and hot spot tests are required for each pollutant. Section (7) of this rule addresses isolated rural nonattainment and maintenance areas. Table 1 follows: [Table not included. See ED-NOTE.]~~

~~(3) Ozone nonattainment and maintenance areas. In addition to the criteria listed in **Table 1** in section (2) 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:~~

~~(a) In ozone nonattainment and maintenance areas the budget test must be satisfied as required by OAR 340-252-0190 for conformity determinations made:~~

~~(A) 45 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) 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.~~

~~(b) 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 OAR 340-252-0200 for conformity determinations made:~~

~~(A) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or~~

~~(B) If EPA has declared 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.~~

~~(c) An ozone nonattainment area must satisfy the emission reduction test for NO_x, as required by OAR 340-252-0200, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or Phase I 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 NO_x emissions levels in 1990.~~

~~(d) 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 OAR 340-252-0200; or~~

~~(B) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by OAR 340-252-0190 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in subsection (3)(a) of this rule).~~

~~(c) Notwithstanding subsections (3)(a) and (3)(b) 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 reasonable further progress and attainment demonstration requirements must satisfy one of the following requirements:~~

~~(A) The emission reduction tests as required by OAR 340-252-0200;~~

~~(B) The budget test as required by OAR 340-252-0190, using the motor vehicle emissions budgets in the submitted control strategy implementation plan (subject to the timing requirements of subsection (3)(a) of this rule); or~~

~~(C) The budget test as required by OAR 340-252-0190, 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.~~

~~(4) CO nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in section (2) 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 tests are satisfied as described in the following:~~

~~(a) Projects in CO nonattainment or maintenance areas must satisfy the hot spot test required by OAR 340-252-0170 and 340-252-0240 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 340-252-0170(2).~~

~~(b) In CO nonattainment and maintenance areas the budget test must be satisfied as required by OAR 340-252-0190 for conformity determinations made:~~

~~(A) 45 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) 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.~~

~~(c) Except as provided in subsection (4)(d) of this rule, in CO nonattainment areas the emission reduction tests must be satisfied as required by OAR 340-252-0200 for conformity determinations made:~~

~~(A) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or~~

~~(B) If EPA has declared 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.~~

~~(d) CO nonattainment areas that have not submitted a maintenance plan and that are not required to submit an 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 OAR 340-252-0200; or~~

~~(B) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by OAR 252-0190 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in subsection (4)(b) or this rule.~~

~~(5) PM₁₀ nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in section (2) 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 tests are satisfied as described in the following:~~

~~(a) Projects in PM₁₀ nonattainment or maintenance areas must satisfy the hot spot test required by OAR 340-252-0170 and OAR 340-252-0240.~~

~~(b) In PM₁₀ nonattainment and maintenance areas the budget test must be satisfied as required by OAR 340-252-0190 for conformity determinations made:~~

~~(A) 45 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) 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.~~

~~(c) In PM₁₀ nonattainment areas the emission reduction tests must be satisfied as required by OAR 340-252-0200 for conformity determinations made:~~

~~(A) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes;~~

~~(B) If EPA has declared 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.~~

~~(6) NO₂ nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in section (2) 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:~~

~~(a) In NO₂ nonattainment and maintenance areas the budget test must be satisfied as required by OAR 340-252-0190 for conformity determinations made:~~

~~(A) 45 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) 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.~~

~~(b) In NO₂ nonattainment areas the emission reduction tests must be satisfied as required by OAR 340-252-0200 for conformity determinations made:~~

~~(A) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or~~

~~(B) If EPA has declared 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.~~

~~(7) Non-metropolitan nonattainment and maintenance areas. This section 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.~~

~~(a) FHWA/FTA projects in all non-metropolitan nonattainment and maintenance areas must satisfy the requirements of OAR 340-252-0110 through 340-252-0130, 340-252-0140(4), and 340-252-0170 through 340-252-0180. Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or~~

~~maintenance area, FHWA/FTA projects must also satisfy the requirements of 340-252-0170(2) ("Localized CO and PM₁₀ violations (hot spots)").~~

~~(b) Non-metropolitan nonattainment and maintenance areas are subject to the budget and/or emission reduction tests as described in OAR 340-252-0100(3) through 340-250-0100(6), with the following modifications:~~

~~(A) When the requirements OAR 340-252-0190 and 340-252-0200 apply to non-metropolitan 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 non-metropolitan nonattainment or maintenance area.~~

~~(B) In non-metropolitan nonattainment and maintenance areas that are subject to OAR 340-252-0190, FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the timeframe of the attainment demonstration or maintenance plan. For 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) OAR 340-252-0190;~~

~~(ii) OAR 340-252-0200 (including regional emissions analysis for NO_x in all ozone nonattainment and maintenance areas, notwithstanding 340-252-0200(4)(b)); or~~

~~(iii) As demonstrated by the air quality dispersion model or other air quality modeling 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 a 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 (7)(b)(B) of this rule and the methodology used to meet the requirements of paragraph (7)(b)(B)(iii) of this rule must be determined through the interagency consultation process required in OAR 340-252-0060(2)(d)(B)(xiii) through which the relevant recipients of title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the State air quality agency, and the State department of transportation should reach consensus about the option and methodology selected. EPA and DOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the Governor consistent with the procedure in OAR 340-252-0060(3), which applies for any State air agency comments on a conformity determination.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~[ED. NOTE: The table referred to or incorporated by reference in this rule is available from the agency.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0800~~

340-252-0110

Criteria and Procedures: Latest Planning Assumptions

~~(1) The conformity determination, with respect to all other applicable criteria in OAR 340-252-0120 through 340-252-0200, must be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination must satisfy the requirements of sections (2) through (6) of this rule.~~

~~(2) Assumptions must 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. The conformity determination must also be based on the latest planning assumptions about current and future background concentrations.~~

~~(3) The conformity determination for each transportation plan and TIP must discuss how transit operating policies, including fares and service levels, and assumed transit ridership have changed since the previous conformity determination.~~

~~(4) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.~~

~~(5) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures which have already been implemented.~~

~~(6) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by OAR 340-252-0060.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0810~~

340-252-0120

Criteria and Procedures: Latest Emissions Model

~~(1) The conformity determination must be based on the latest emission estimation model available. This criterion applies during all periods. It is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that State or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by 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.~~

~~(a) The grace period will be no less than three months and no more than 24 months after notice of availability is published in the Federal Register.~~

~~(b) The length of the grace period will depend on the degree of change in the model and the scope of replanning 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) Transportation plan and TIP conformity analyses for which the emissions analysis was begun during the grace period or before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model. Conformity determinations for projects may also be based on the previous model if the analysis was begun during the grace period or before the Federal Register notice of availability, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0820~~

340-252-0130

Criteria and Procedures: Consultation

~~Conformity must be determined according to the consultation procedures in OAR 340-252-0060 and in the applicable implementation plan, and according to the public involvement procedures established in compliance with 23 CFR part 450. Until the implementation plan revision required by 40 CFR 51.390 is fully approved by EPA, the conformity determination must be made according to OAR 340-252-0060(1)(b) and 340-252-0060(4) and the requirements of **23 CFR part 450.**~~

~~[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0830~~

340-252-0140

Criteria and Procedures: Timely Implementation of TCMs

~~(1) The transportation plan, TIP or FHWA/FTA project or regionally significant projects approved or adopted by a recipient of funds under **Title 23 U.S.C.** which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.~~

~~(2) 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 U.S.C. or the Federal Transit Laws, consistent with schedules included in the applicable implementation plan. Timely implementation of TCMs which are not eligible for funding under **Title 23 U.S.C.** or the Federal Transit Laws is required where failure to implement such measure(s) will jeopardize attainment or maintenance of a standard.~~

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

~~(3) For TIPs, this criterion is satisfied if the following conditions are met:~~

~~(a) 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 U.S.C. or the Federal Transit Laws are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined after consultation in accordance with OAR 340-252-0060 that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding of 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. Timely implementation of TCMs which are not eligible for funding under title 23 U.S.C. or the Federal Transit Laws is required where attainment or maintenance of a standard is jeopardized.~~

~~(b) 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.~~

~~(c) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.~~

~~(4) For FHWA/FTA projects and regionally significant projects approved or adopted by a recipient of funds under Title 23 U.S.C. 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.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0840~~

340-252-0150

Criteria and Procedures: Currently Conforming Transportation Plan and TIP

~~There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.~~

~~(1) 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 DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of OAR 340-252-0050.~~

~~(2) 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 division are satisfied.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0850

340-252-0160

Criteria and Procedures: Projects from a Plan and TIP

~~(1) The project must come from a conforming plan and program. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of OAR 340-252-0100 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 section (2) of this rule and from a conforming program if it meets the requirements of section (3) of this rule. Special provisions for TCMs in an applicable implementation plan are provided in section (4) of this rule.~~

~~(2) A project is considered 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 OAR 340-252-0070 ("Content of Transportation Plans"), 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, 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.~~

~~(3) A project is considered to be from a conforming program 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 the project design concept and scope have not changed significantly from those which were described in the TIP; and~~

~~(b) If the TIP describes a project design concept and scope which includes project level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by OAR 340-252-0260(a) in order for the project to be considered from a conforming program. 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.~~

~~(4) TCMs. This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0860~~

340-252-0170

Criteria and Procedures: Localized CO and PM₁₀ Violations (Hot-spots)

~~(1) This section applies at all times. A FHWA/FTA project and any regionally significant project approved or adopted by a recipient of funds under title 23 U.S.C. must not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations 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 consultation requirements of OAR 340-252-0060(2)(e) and the methodology requirements of 340-252-0240.~~

~~(2) This section applies for CO nonattainment areas as described in OAR 340-252-0100(4)(a). Each 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) according to the consultation requirements of 340-252-0060(2)(e) and the methodology requirements of~~

~~340-252-00240. 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.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0870~~

~~340-252-0180~~

~~Criteria and Procedures: Compliance with PM₁₀ Control Measures~~

~~A FHWA/FTA project and any regionally significant project approved or adopted by a recipient of funds under Title 23 U.S.C. must comply with PM₁₀ control measures in the applicable implementation plan. This criterion is satisfied if the project level conformity determination contains a written commitment from the project sponsor to include the final plans, specifications, and estimates for the project those control measures (for the purpose of limiting PM₁₀ emissions from the construction activities and/or normal use and operation associated with the project) contained in the applicable implementation plan.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0880~~

~~340-252-0190~~

~~Criteria and Procedures: Motor Vehicle Emissions Budget~~

~~(1) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in OAR 340-252-0100(3) through (7). This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in~~

~~paragraph (c) of this section are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.~~

~~(2) Consistency with the 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:~~

~~(a) 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.~~

~~(b) When a maintenance plan has been 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 an existing violation in the years before the last year of the maintenance plan. The interagency consultation process required by OAR 340-252-0060 shall determine what must be considered in order to make such a finding;~~

~~(B) For 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.~~

~~(3) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant or pollutant precursor in OAR 340-252-0020(2) 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.~~

~~(4) 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 projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan.~~

~~(a) Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional emissions analysis that meets the requirements of OAR 340-252-0230 and 340-252-0060(2)(c).~~

~~(b) 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 section (2) of this rule, may be determined by interpolating between the years for which the regional emissions analysis is performed.~~

~~(5) motor vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance plans.~~

~~(a) Consistency with the motor vehicle emissions budgets 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 45 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.~~

~~(b) If EPA has declared an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes, the inadequate budget(s) shall not be used to satisfy the requirements of this section. 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 OAR 340-252-0200 must be satisfied.~~

~~(c) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes more than 45 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 OAR 340-252-0150 and 340-252-0160, which require 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.~~

~~(d) EPA will not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision 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 OAR 340-252-0030 for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).~~

~~(e) 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.~~

~~(f) When the motor vehicle emissions budget(s) used to satisfy the requirements of this section 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 a new violation 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.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0890~~

340-252-0200

Criteria and Procedures: Emission Reductions in Areas Without Motor Vehicle Emissions Budgets

~~(1) 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 OAR 340-252-0100(3) through 340-252-0100(7). 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.~~

~~(2) 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 OAR 340-252-0230 and sections (5) through (8) of this rule demonstrates that for each analysis year and for each of the pollutants described in section (4) of this rule:~~

~~(a) The emissions predicted in the "Action" scenario 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; and~~

~~(b) The emissions predicted in the "Action" scenario are lower than 1990 emissions by any nonzero amount.~~

~~(3) 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 OAR 340-252-0230 and sections (5) through (8) of this rule demonstrates that for each analysis year and for each of the pollutants described in section (4) of this rule, one of the following requirements is met:~~

~~(a) The emissions predicted in the "Action" scenario 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~~

~~(b) 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 an implementation plan revision 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.~~

~~(4) Pollutants. The regional emissions analysis must be performed for the following pollutants:~~

~~(a) VOC in ozone areas;~~

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

~~(c) CO in CO areas;~~

~~(d) PM₁₀ in PM₁₀ areas;~~

~~(e) 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~~

~~(f) NO_x in NO₂ areas.~~

~~(5) Analysis years. 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 a transportation plan's forecast period must also be an analysis year.~~

~~(6) "Baseline" scenario. The regional emissions analysis required by sections (2) and (3) 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 OAR~~

~~340-252-0270 and projects exempt from regional emissions analysis as listed in 340-252-0280 need not be explicitly considered):~~

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

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

~~(c) 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.~~

~~(7) "Action" scenario. The regional emissions analysis required by sections (2) and (3) 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 listed in OAR 340-252-0270 and projects exempt from regional emissions analysis as listed in 340-252-0280 need not be explicitly considered):~~

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

~~(b) Completion 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;~~

~~(c) 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;~~

~~(d) 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;~~

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

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

~~(8) Projects not from a conforming transportation plan and TIP. For the regional emissions analysis required by sections (2) and (3) 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.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0900~~

~~340-252-0210~~

~~Consequences of Control Strategy Implementation Plan Failures~~

~~(1) Disapprovals:~~

~~(a) 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 revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.~~

~~(b) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, then beginning 120 days after such disapproval, only projects in the first three years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning 120 days after disapproval without a protective finding, no transportation plan, TIP, or project not in the first three years of the currently conforming plan and TIP may be found to conform until another control~~

~~strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined. During the first 120 days following EPA's disapproval without a protective finding, transportation plan, TIP, and project conformity determinations shall be made using the motor vehicle emissions budget(s) in the disapproved control strategy implementation plan, unless another control strategy implementation plan revision has been submitted and its motor vehicle emissions budget(s) applies for transportation conformity purposes, pursuant to OAR 340-252-0100.~~

~~(c) In disapproving a control strategy implementation plan revision, EPA would give 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.~~

~~(2) Failure to submit and incompleteness. 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.~~

~~(3) Federal implementation plans. If EPA promulgates a Federal implementation plan that contains motor vehicle emissions budget(s) as a result of a State failure, the conformity lapse imposed by this section because of that State failure is removed.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0910~~

~~340-252-0220~~

~~Requirements for Adoption or Approval of Projects by Other Recipients of Funds Designated under Title 23 U.S.C. or the Federal Transit Laws~~

~~(1) Except as provided in section 2 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:~~

~~(a) The project was included in the first three years of the most recently conforming transportation plan and TIP (or the conformity determination's regional emissions analyses), even if conformity status is currently lapsed; and the project's design concept and scope has not changed significantly from those analyses;~~

~~(b) 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 OAR 340-252-0190 and/or 340-252-0200 for a project not from a conforming transportation plan and TIP); or~~

~~(c) Where applicable, as established in OAR 340-252-0240, project level hot-spot analysis criteria have been satisfied.~~

~~(2) In non-metropolitan nonattainment and maintenance areas subject to OAR 340-252-0100(7), 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:~~

~~(a) 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;~~

~~(b) 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 OAR 340-252-0190 and/or 340-252-0200 for projects not from a conforming transportation plan and TIP); or~~

~~(c) Where applicable, as established in OAR 340-252-0240, project level hot-spot analysis criteria have been satisfied.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-1000~~

340-252-0230

~~Procedures for Determining Regional Transportation-Related Emissions~~

~~(1) General requirements.~~

~~(a) The regional emissions analysis required by OAR 340-252-0190 and 340-252-0200 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 shall 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 340-252-0060. 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.~~

~~(b) 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.~~

~~(c) 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 OAR 340-252-0190 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.~~

~~(d) Emissions reduction 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 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.~~

~~(e) A regional emissions analysis for the purpose of satisfying the requirements of OAR 340-252-0200 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.~~

~~(f) The ambient temperatures used for the regional emissions analysis shall 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 OAR 340-252-0060(2)(e) 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.~~

~~(g) Reasonable methods shall 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.~~

~~(2) Regional emissions analysis in serious, severe, and extreme ozone nonattainment areas and serious CO nonattainment areas must meet the requirements of subsections (2)(a) through (c) of this rule if their metropolitan planning area contains an urbanized area population over 200,000.~~

~~(a) 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 OAR 340-252-0060(2)(e). 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 10 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.~~

~~(b) 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.~~

~~(c) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled (VMT) shall 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 OAR 340-252-0060(2)(c).~~

~~(3) All other metropolitan nonattainment areas shall comply with the following requirements after January 1, 1996:~~

~~(a) Estimates of regional transportation-related emissions used to support conformity determinations must be made according to the procedures which meet the requirements in sections (3)(b) and (c) of this rule.~~

~~(b) Procedures which satisfy some or all of the requirements of section (2) of this rule shall be used in all areas not subject to section (2) of this rule where those procedures have been the previous practice of the MPO.~~

~~(c) At a minimum, these areas shall estimate emissions using methodologies and procedures which possess the following attributes:~~

~~(A) A network based travel demand model which describes the network in sufficient detail to capture at least 85 percent of the vehicle trips;~~

~~(B) An ability to generate plausible vehicle trip tables based on current and future land uses and travel options in the region;~~

~~(C) Software, or other appropriate procedures, to assign the full spectrum of vehicular traffic including, where possible, truck traffic, to the network;~~

~~(D) Other modes of travel shall be estimated in accordance with reasonable professional practice either quantitatively or qualitatively;~~

~~(E) Sufficient field observations of traffic (e.g. average speeds, average daily volumes, average peaking factors for specific links that are directly identifiable in the network) to calibrate the traffic assignment for base year data;~~

~~(F) Software, or other appropriate procedures, to calculate emissions based on network flows and link speeds, and as necessary, to refine speed estimates from assigned traffic;~~

~~(G) Software, or other appropriate procedures, to account for additional "off model" transportation emissions; and~~

~~(H) estimates of future land uses sufficient to allow projections of future emissions.~~

~~(4) PM₁₀ from construction-related fugitive dust.~~

~~(a) 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.~~

~~(b) In PM₁₀ nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the regional PM₁₀ emissions analysis shall consider construction-related fugitive PM₁₀ and shall 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.~~

~~(5) Reliance on previous regional emissions analysis.~~

~~(a) The TIP may be demonstrated to satisfy the requirements of OAR 340-252-0190 ("motor vehicle emissions budget") or 340-252-0200 ("Emission reductions in areas without motor vehicle emissions budgets") 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.~~

~~(b) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of OAR 340-252-0190 or 340-252-0200 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 the 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 regional emissions at the time of the transportation plan's conformity determination, and the design concept and scope of the project is not significantly different from that described in the transportation plan.~~

Written Commitments

(1) In accordance with 40 CFR 93.122(a)(4)(ii), prior to making a conformity determination on the transportation plan or TIP, a Metropolitan Planning Organization or the Oregon Department of Transportation may not include emissions reduction credits from any control measures that are not included in the transportation plan or TIP and that do not require a regulatory action in the regional emissions analysis unless the Metropolitan Planning Organization, Oregon Department of Transportation or Federal Highway Administration/Federal Transit Administration obtains written commitments, as defined in 40 CFR 93.101, from the appropriate entities to implement those control measures. The written commitments to implement those control measures must be fulfilled by the appropriate entities.

(2) In accordance with 40 CFR 93.125(c), prior to making a project-level conformity determination for a transportation project, the Federal Highway Administration/Federal Transit Administration must obtain from the project sponsor or operator written commitments, as defined in 40 CFR 93.101, to implement any project-level mitigation or control measures in the construction or operation of the project identified as conditions for NEPA process completion. The written commitments to implement those project-level mitigation or control measures must be fulfilled by the appropriate entities. Prior to making a conformity determination on the transportation plan or TIP a Metropolitan Planning Organization or Oregon Department of Transportation must ensure any project-level mitigation or control measures are included in the project design concept and Scope and are appropriately identified in the regional emissions analysis. Prior to making a project-level conformity determination, written commitments must be obtained before such mitigation or control measures are used in a project-level hot-spot analysis.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

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Stats. Implemented: ORS 468A.035

Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-1010

~~340-252-0240~~

~~Procedures for Determining Localized CO and PM₁₀ Concentrations (Hot-spot Analysis)~~

~~(1) CO Hot-spot analysis:~~

~~(a) The demonstrations required by OAR 340-252-0170 ("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 on Air Quality Models). These procedures shall be used in the following cases, unless different procedures developed through the interagency consultation process required in OAR 252-0060 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 a new FHWA/FTA funded or approved project in the vicinity;~~

~~(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.~~

~~(b) In cases other than those described in subsection (1)(a) of this rule, the demonstrations required by OAR 340-252-0170 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 OAR 340-252-0170 are met.~~

~~(2) PM₁₀ Hot spot analysis.~~

~~(a) The hot spot demonstration required by OAR 340-252-0170 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.~~

~~(b) Where quantitative analysis methods are not required, the demonstration required by OAR 340-252-0170 may be based on a qualitative consideration of local factors.~~

~~(c) The identification of the sites described in paragraphs (2)(a)(A) and (2)(a)(B) of this rule, and other cases where quantitative methods are appropriate, shall be determined through the interagency consultation process required in OAR 340-252-0060. 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.~~

~~(d) The requirements for quantitative analysis contained in this section (2) will not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.~~

~~(3) General requirements.~~

~~(a) 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.~~

~~(b) 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 traffic and the ratio of future to current emission factors.~~

~~(c) Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.~~

~~(d) PM₁₀ or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to implement such measures, as required by OAR 340-252-0260(1).~~

~~(e) CO and PM₁₀ Hot-Spot Analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-1020~~

340-252-0250

Using the Motor Vehicle Emissions Budget in the Applicable Implementation Plan (or Implementation Plan Submission)

~~(1) In interpreting an applicable implementation plan, or implementation plan submission with respect to its Motor Vehicle Emissions Budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan, or submission. Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emission budget for conformity purposes, the MPO or ODOT may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans, or submissions, which demonstrate that after implementation of control measures in the implementation plan:~~

~~(a) Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;~~

~~(b) Emissions from all sources will result in achieving attainment prior to the attainment deadline or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or~~

~~(c) Emissions will be lower than needed to provide for continued maintenance.~~

~~(2) If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin", the State may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.~~

~~(3) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan, or implementation plan submission, allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, unless the implementation plan establishes mechanisms for such trades.~~

~~(4) If the applicable implementation plan, or implementation plan submission, estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan, or implementation plan submission, explicitly indicates an intent to create such subarea budgets for purposes of conformity.~~

~~(5) If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-1030~~

~~340-252-0260~~

~~Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures~~

~~(1) Prior to determining that a transportation project is in conformity, the MPO, ODOT, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws, FHWA, or FTA must obtain from the project sponsor and/or operator 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 a conformity determination is made, written commitments must 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 sections OAR 340-252-0190 ("motor vehicle emissions budget") and 340-252-0200 ("Emission reductions in areas without motor vehicle emissions budgets") or used in the project-level hot spot analysis required by 340-252-0170.~~

~~(2) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.~~

~~(3) The implementation plan revision required in 40 CFR 51.390 shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.~~

~~(4) If the MPO, ODOT or project sponsor believes the mitigation or control measure is no longer necessary for conformity, 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 OAR 340-252-0170, emission budget requirements of 340-252-0190, and emission reduction requirements of 340-252-0200 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the~~

~~interagency consultation process required under OAR 340-252-0060. The MPO and DOT must find that the transportation plan and TIP still satisfy the applicable requirements of OAR 340-252-0190 and 340-252-0200 and that the project still satisfies the requirements of OAR 340-252-0170, and therefore that the conformity determinations for the transportation plan, TIP and project are still valid. This finding is subject to the applicable public consultation requirements in OAR 340-252-0060(4) for conformity determinations for projects.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-1040~~

340-252-0270

Exempt Projects

~~Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 2 are exempt from the requirement to determine conformity. 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 Table 2 of this section is not exempt if the MPO or ODOT in consultation with other agencies under OAR 340-252-0060(3)(b) & (d), and the EPA, and 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 must ensure that exempt projects do not interfere with TCM implementation. **Table 2** follows: [Table not included. See ED-NOTE.]~~

Table 2 – Exempt projects

SAFETY

~~Railroad/highway crossing.~~

~~Hazard elimination program.~~

~~Safer non-Federal aid system roads.~~

~~Traffic control devices and operating assistance other than signalization projects.~~

~~Shoulder improvements.~~

~~Increasing sight distance.~~

~~Safety improvement program.~~

~~Railroad/highway crossing warning devices.~~

~~Guardrails, median barriers, crash cushions.~~

~~Pavement resurfacing and/or rehabilitation.~~

~~Pavement marking demonstration.~~

~~Emergency relief (23 U.S.C. 125).~~

~~Fencing.~~

~~Skid treatments.~~

~~Safety roadside rest areas.~~

~~Adding medians.~~

~~Truck climbing lanes outside the urbanized area.~~

~~Lighting improvements.~~

~~Widening narrow pavements or reconstructing bridges (no additional travel lanes).~~

~~Emergency truck pullovers.~~

MASS TRANSIT

~~Operating assistance to transit agencies.~~

~~Purchase of support vehicles.~~

~~Rehabilitation of transit vehicles.¹~~

~~Purchase of office, shop, and operating equipment for existing facilities.~~

~~Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).~~

~~Construction or renovation of power, signal, and communications systems.~~

~~Construction of small passenger shelters and information kiosks.~~

~~Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).~~

~~Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.~~

~~Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet.¹~~

~~Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR 771.~~

~~AIR QUALITY~~

~~Continuation of ride-sharing and van-pooling promotion activities at current levels.~~

~~Bicycle and pedestrian facilities.~~

~~OTHER~~

~~Specific activities which do not involve or lead directly to construction such as:~~

~~Planning and technical studies.~~

~~Grants for training and research programs.~~

~~Planning activities conducted pursuant to titles 23 and 49 U.S.C.~~

~~Federal aid systems revisions.~~

~~Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.~~

~~Noise attenuation.~~

~~Emergency or hardship advance land acquisitions (23 CFR 712 or 23 CFR 771).~~

~~Acquisition of scenic easements.~~

~~Plantings, landscaping, etc.~~

~~Sign removal.~~

~~Directional and informational signs.~~

~~Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).~~

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

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~[Tables: The table(s) referred to or incorporated by reference in this rule are available from the agency.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-1050~~

~~340-252-0280~~

~~Projects Exempt from Regional Emissions Analyses~~

~~Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 3 of this section are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM₁₀ concentrations must 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 Table 3 is not exempt from regional emissions analysis if the MPO or ODOT in consultation with other agencies (see OAR 340-252-0060), the EPA, and 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. Table 3 follows: [Table not included. See ED. NOTE.]~~

~~Table 3 – Projects Exempt From Regional Emissions Analyses~~

~~Intersection channelization projects.~~

~~Intersection signalization projects at individual intersections.~~

~~Interchange reconfiguration projects.~~

~~Changes in vertical and horizontal alignment.~~

~~Truck size and weight inspection stations.~~

~~Bus terminals and transfer points.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~[ED. NOTE: The table(s) referred to or incorporated by reference in this rule are available from the agency.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-1060~~

~~340-252-0290~~

~~Traffic Signal Synchronization Projects~~

~~Traffic signal synchronization projects may be approved, funded, and implemented without satisfying the requirements of this division. However, all subsequent regional emissions analyses required by OAR 340-252-0190 and 340-252-0200 for transportation plans, TIPs, or projects not from a conforming plan and TIP must include such regionally significant traffic signal synchronization projects.~~

~~[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]~~

~~Stat. Auth.: ORS 468.020~~

~~Stats. Implemented: ORS 468A.035~~

~~Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-1070~~

DIVISION 200

GENERAL AIR POLLUTION PROCEDURES AND DEFINITIONS

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, **42 U.S.C.A 7401 to 7671q**.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on ~~June 19, 2009~~ February 18 & 19, 2010.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f.

& ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09

Summary of Public Comment and Agency Response

Title of Rulemaking: Transportation Conformity

Prepared by: Dave Nordberg

Date: Jan. 11, 2010

Comment period The public comment period opened Oct. 20, and closed at 5 p.m. Nov. 30, 2009. DEQ held a public hearing at 7 p.m. Nov. 23, 2009 at DEQ headquarters in downtown Portland. No members of the public attended. A single comment letter was received during the comment period. After the comment period closed, DEQ discovered many rule provisions intended for repeal had been inadvertently omitted from rules published for comment. The agency posted corrected rule changes and notified interested persons on Dec. 22, 2009 that DEQ would accept additional comments on the corrected proposal until Jan. 8, 2010. No additional comments were submitted.

Organization of comments and responses During the initial comment period, the Oregon Department of Transportation submitted comments on three aspects of the proposed rules. Summaries of each comment and DEQ's responses are below.

Summary of Comments and Agency Responses	
Comment 1	Remove "except Grants Pass" from proposed OAR 340-252-0060(1)(d)(E)(v).
Response	DEQ interprets this comment to apply to OAR 340-252-0060(1)(d)(E)(iv)-- the only paragraph in this section from which "except Grants Pass" was not deleted. DEQ agrees the suggested modification is consistent with the intent of the proposed rules and deletes this reference from the rules to be presented for EQC adoption.
Comment 2	At OAR 340-252-0060(2)(b)(D)(viii), replace "40 CFR 93.126" with "40 CFR 93.125."
Response	DEQ agrees the citation of "40 CFR 93.126" in this paragraph is incorrect. This reference is replaced with "40 CFR 93.125" in the rules to be presented for EQC adoption.
Comment 3	Consider replacing the text of OAR 340-252-0230(1) and (2) with the language offered by Appendix A, page 9 of "EPA's Guidance for Developing Transportation Conformity State Implementation Plans" dated January, 2009.
Response	DEQ acknowledges that using EPA's suggested language for OAR 340-252-0230(1) and (2) will enhance consistency with other states. The rules proposed for EQC adoption are modified to apply the federal wording.

List of Commenters and Reference Numbers				
Reference Number	Name	Organization	Address	Date on comments
1, 2 and 3	H.A. Gard	Oregon Department of Transportation	Department of Transportation 355 Capitol St. NE Salem, OR 97301	Nov. 30, 2009

Transportation Conformity
Stakeholder Involvement Participants

Wayne Elson, U.S. Environmental Protection Agency

Michelle Eraut, Federal Highway Administration

Jazmin Casas, Federal Highway Administration

Marina Orlando, Oregon Department of Transportation

Merlyn Hough, Lane Regional Air Protection Agency

Tom Kloster, Metro

Richard Schmidt, Mid Willamette Valley Council of Governments

Susan Payne, Central Lane Council of Governments

Vicki Guarino, Rogue Valley Council of Governments

Chris Hagerbaumer, Oregon Environmental Council

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: Dec. 2, 2009

To: Environmental Quality Commission

From: Dave Nordberg, DEQ staff

Subject: Presiding officer's report for rulemaking hearing

Title of proposal:	Transportation Conformity
Hearing date and time:	Nov. 23, 2009, 7 p.m.
Hearing location:	DEQ headquarters 811 SW Sixth Ave. Portland, OR 97204

DEQ convened the rulemaking hearing on proposed changes to Oregon's transportation conformity rules at 7 p.m. No one apart from DEQ staff attended and the hearing closed at 7:30 p.m.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

TRANSPORTATION CONFORMITY

This rulemaking repeals state regulations that duplicate federal transportation conformity rules.

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and the justification for differing from, or adding to, federal requirements. This statement is required by OAR 340-011-0029(1).

1. Is the proposed rulemaking different from, or in addition to, applicable federal requirements? If so, what are the differences or additions?

Yes, the proposed rules are more restrictive than applicable federal regulations in one aspect. Since EPA no longer requires DEQ to adopt the federal transportation conformity rules as state regulations, this rulemaking proposes to rescind the majority of state regulations allowing federal rules to govern the transportation conformity process in Oregon. However, this proposal includes a provision that would be more restrictive than the federal minimum. Specifically, the U.S. Environmental Protection Agency's transportation conformity rules allow that under certain circumstances a transportation planning agency may shorten an air quality analysis period from 20-plus years in the future to as few as 10. Federal rules provide that the shortening be applied at the election of the transportation planning agency after *consulting* with the applicable air pollution agency. This proposal is slightly more restrictive in that the shortened analysis period would be allowed only after consultation with *and approval of* the applicable air pollution agency.

2. If the proposal differs from, or is in addition to, applicable federal requirements, explain the reasons for the difference or addition (including as appropriate, the public health, environmental, scientific, economic, technological, administrative or other reasons).

DEQ views a long analysis period as being essential to the purpose of conformity. The core principle of conformity is to make transportation planners evaluate the air pollution generated by new transportation facilities (highways) and keep vehicle emissions within the level needed to meet national air quality standards. Often the full air quality consequences of a new transportation system or major project cannot be seen in the first ten years. Environmental effects take decades to mature because: 1) the average

American drives 1.5 percent more each year, 2) Oregon's population is projected to grow 1.4 percent per year until 2030, and 3) highway expansion intensifies the use of surrounding land which in turn stimulates additional traffic. For these reasons DEQ considers it inappropriate to shorten a conformity analysis period without agreement of the relevant air quality agency.

3. If the proposal differs from, or is in addition to, applicable federal requirements, did DEQ consider alternatives to the difference or addition? If so, describe the alternatives and the reason(s) they were not pursued.

Yes. DEQ originally suggested to transportation planners that a shortened time period should not be allowed in Oregon because it could create a loophole for weakening the conformity process. However, transportation planners liked the flexibility a short analysis could provide when an area cannot demonstrate conformity over a long analysis period.

Transportation planners suggested the following approaches for the use of a short analysis period:

1. Oregon Department of Transportation suggested allowing the short timeframe subject to interagency consultation (but not interagency approval). ODOT offered a list of specific air quality considerations to be evaluated by a transportation planning agency. In no case would ODOT allow a short analysis when the 20-year projection showed an actual violation of the National Ambient Air Quality Standards.
2. Rogue Valley Council of Governments suggested allowing the shortened time period but requiring interagency consultation following the conformity analysis. The purpose of the consultation would be to create measures to avoid using a 10-year horizon for two consecutive analyses. Approval of an air pollution agency would not be required.
3. Lane Council of Governments suggested allowing the 10-year planning period if an area failed the 20-year analysis period, but only if air quality monitoring results extrapolated from the last four years indicate the region will stay below the NAAQS. Approval of an air pollution agency would not be needed.
4. Mid Willamette Valley Council of Governments suggested the shortened time period be allowed when the relevant air quality agency agreed air quality would not be jeopardized.
5. Metro suggested that if the shortened period were allowed, a transportation planning agency should still calculate the 20-year emission value for the interagency process and publish the figure as part of the formal conformity determination. Approval of an air pollution agency would not be required.

DEQ does not propose to adopt the first three suggestions because they would give the decision to shorten a conformity analysis to transportation planning agencies without the concurrence of an air quality agency.

However, DEQ recognizes there may be times and circumstances when a shortened conformity timeframe may be appropriate. For example, circumstances may arise when emissions projections use a computer model that differs from the model originally used to develop an emissions budget, or when other planning assumptions have changed significantly since an emissions budget was established. DEQ therefore accepts the fourth option as the basis for this rule proposal. That is, a conformity analysis period may be shortened only under certain circumstances and only with the *approval* of the applicable air pollution control agency.

Finally, the fifth option will not be useful under conditions where the proposed rules would allow a shortened timeframe. The proposed rule OAR 340-252-0070 notes that:

“A shortened timeframe may be appropriate when projected future emissions fail to meet a Motor Vehicle Emission Budget (MVEB) due to calculation methods that are inconsistent with the methods used to determine the MVEB.”

This clarification means a shortened analysis period would be allowed only when the emissions projection for a long analysis would be inaccurate. In that situation, the fifth option (calculating and publishing the 20-year emissions projection) would provide misleading information and therefore was not pursued.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 340

Proposed Rulemaking

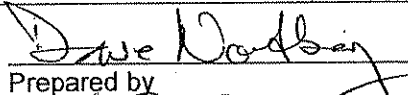
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

TRANSPORTATION CONFORMITY

This rulemaking repeals state regulations that duplicate federal transportation conformity rules.

Title of Proposed Rulemaking	Transportation Conformity	
Statutory Authority or other Legal Authority	ORS 468.020	
Statutes Implemented	ORS 468A.035	
Need for the Rule(s)	This rulemaking will align Oregon's Transportation Conformity rules with corresponding federal requirements. This will be done by rescinding state rules that duplicate federal regulations.	
Documents Relied Upon for Rulemaking	Documents used for this proposal are the Code of Federal Regulations (CFR) and Federal Register publications pertaining to transportation conformity: 40 CFR 51, Subpart T 40 CFR 93, Subparts A & B Federal Register Vol. 72, pp. 24472 to 24494 Federal Register Vol. 73, pp. 4420 to 4441	
Requests for Other Options	Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.	
Fiscal and Economic Impact, Statement of Cost Compliance		
Overview	This rulemaking will allow Oregon's transportation planning agencies to rely on new federal regulations and quickly apply changes without waiting for subsequent changes to state regulations. It will reduce administrative costs of those agencies by extending the interval between conformity determinations from three to four years and by streamlining requirements for local conformity analyses ("hot-spot" analyses).	
Impacts on the General Public	None	
Impacts to Small Business (50 or fewer employees – ORS183.310(10))	None	
Cost of Compliance on Small Business (50 or fewer employees – ORS183.310(10))	a) Estimated number of small businesses subject to the proposed rule	Proposed rule changes apply only to transportation planning agencies. Small businesses are not affected.
	b) Types of businesses and industries with small businesses subject to the proposed rule	None

	c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services	None
	d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed rule	None
	e) A description of the manner in which DEQ involved small businesses in the development of this rulemaking	Small businesses are not affected and were not involved in rule development.
Impacts on Large Business (all businesses that are not "small businesses" under ORS183.310(10))	Proposed rule changes apply only to transportation planning agencies. Large businesses are not affected.	
Impacts on Local Government	Metropolitan Planning Organizations are expected to save money by applying the streamlined requirements of current federal transportation conformity rules. Most significant is a four-year period between conformity determinations which better coincides with other transportation planning activities. Other provisions also increase the efficiency of transportation planning agencies. These include simplified techniques for demonstrating conformity of local hot-spots, and allowing a one-year grace period from the time an area becomes subject to conformity until conformity requirements take effect. Rogue Valley Council of Governments may have a slight reduction in workload by transferring the responsibility for Grants Pass conformity to the Oregon Department of Transportation (ODOT).	
Impacts on State Agencies other than DEQ	ODOT will have reduced costs by using the more efficient method of "hot-spot" analyses permitted under current federal rules. The new "categorical" hot-spot provisions will allow the air quality effects of projects to be assessed by their class or category rather than require a custom analysis for every project regardless of size or type. ODOT may have a slight increase in workload by assuming planning responsibility for Grants Pass. Any increase should be small as transportation projects in Grants Pass are infrequent. ODOT has said that they will accept this responsibility.	
Impacts on DEQ	DEQ may experience a slight cost savings from reduced need to consult with transportation planning agencies about differences between state and federal conformity requirements.	
Assumptions	Under current conditions planning agencies are subject to both state and federal rules and any discontinuities between the two. If the proposal is adopted, planning agencies will be primarily subject to federal requirements.	
Housing Costs	DEQ has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.	
Administrative Rule Advisory Committee	This proposal was developed through meetings with Oregon's transportation planning agencies and the Federal Highway Administration. Transportation planning agencies indicated these rule changes would decrease their administrative/technical workload but could not quantify the exact benefit.	


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10-14-09
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Approved by DEQ Budget Office
4/22/09

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10-14-09
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State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

Rulemaking Proposal
for
Transportation Conformity

RULE CAPTION

This rulemaking repeals state regulations that duplicate federal transportation conformity rules.

1. Explain the purpose of the proposed rules.

Transportation conformity rules require agencies that plan a nonattainment or maintenance area's transportation system to ensure that the vehicle emissions generated by that system are within the amount allowed by air quality plans. States were originally required to adopt federal transportation rules verbatim as revisions to their state implementation plans. The requirement to copy federal rules was recently lifted and this rulemaking proposes to repeal redundant state rules and defer to federal requirements. State rules that pertain to Oregon-specific conditions, such as those describing interagency consultation will be retained. This will streamline conformity requirements. These proposed changes do not alter the fundamental effect of the program.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes ☐ No ☒

a. If yes, identify existing program/rule/activity:

Not applicable.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes ☐ No ☐ (if no, explain):

Not applicable.

c. If no, apply the following criteria to the proposed rules.

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
 - a. resources, objectives or areas identified in the statewide planning goals, or
 - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involved more than one agency are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider DEQ's mandate to protect public health and the environment.

d. In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

Conformity rules do not directly apply to land use. This rule may indirectly affect future land uses identified in comprehensive land use plans because transportation facilities or improvements found not to conform would lose federal funding and may be prohibited.

The proposed rules are refinements that provide additional flexibility in meeting the requirements of existing rules that do affect land use. These rules may have a significant effect on the resources, objectives or areas identified in four statewide planning goals. Specifically, these rules may affect the interagency and public coordination responsibilities of government bodies established under Goals 1, 2, and 9. Second, the rules further the objectives of Goal 6 because they assist in the maintenance and improvement of air quality. Finally, the proposed rules may have a significant effect on Goal 12, since it may be necessary to reduce reliance on the single occupant automobile in order to reduce emissions, and the rules will assist in minimizing environmental impacts and costs.

- 3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures DEQ will use to ensure compliance and compatibility.**

Any potential affect on land uses would be indirect. Conformity rules do not apply to land use; however, they can affect an area's transportation system. Changes needed in a transportation plan to meet conformity requirements could involve some land use changes and how land uses develop. Conformity rules ensure compliance with the statewide planning goals because they further intergovernmental coordination requirements and help to maintain air quality standards. Existing state, regional and local transportation planning requirements (along with the coordination required under the proposed rules) are adequate to ensure that any indirect effects on land use will be consistent with land use plans and regulations.