

**MEMORANDUM OF UNDERSTANDING  
AMONG  
THE OHIO-KENTUCKY-INDIANA REGIONAL COUNCIL OF GOVERNMENTS,  
THE OHIO ENVIRONMENTAL PROTECTION AGENCY,  
THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,  
THE INDIANA DEPARTMENT OF TRANSPORTATION,  
THE MIAMI VALLEY REGIONAL PLANNING COMMISSION,  
THE OHIO DEPARTMENT OF TRANSPORTATION,  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY-REGION 5,  
THE FEDERAL HIGHWAY ADMINISTRATION-OHIO DIVISION,  
THE FEDERAL HIGHWAY ADMINISTRATION-INDIANA DIVISION,  
THE FEDERAL TRANSIT ADMINISTRATION-REGION 5**

The purpose of this Memorandum of Understanding (MOU) is to implement section 176(c)(4)(E) of the Clean Air Act (CAA), as amended (42 USC 7401 et seq.), the related requirements of 23 U.S. C. 109(j), and regulations under the Code of Federal Regulations (CFR) section 40, Part 93, Subpart A with respect to the conformity of transportation plans, programs, and projects that are developed, funded or approved by the United States Department of Transportation (U.S. DOT) and by Metropolitan Planning Organizations (MPOs), and the Ohio Department of Transportation (Ohio DOT), the Indiana Department of Transportation (INDOT) or other recipients of funds under title 23 USC or the Federal Transit Laws (49 USC Chapter 53). This MOU sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to applicable implementation plans developed according to Part A, section 110 and Part D of the CAA.

This is a MOU concerning the criteria and procedures for the conformity determination of transportation plans, programs and projects in the Cincinnati-Middletown-Wilmington OH-KY-IN, Combined Statistical Area for National Ambient Air Quality Standards (NAAQS), pursuant to the CAA Amendments of 1990.

The Kentucky portion of the Cincinnati-Middletown-Wilmington OH-KY-IN area will have a separate state rule or agreement for transportation conformity consultation. Although the Kentucky agencies and Region 4 federal agencies are not parties to this agreement, the agencies are expected to participate in the consultation meetings and to review materials. These parties are: Kentucky Environmental and Public Protection Cabinet (KEPPC); United States Environmental Protection Agency-Region 4 (U.S. EPA-R4); Kentucky Transportation Cabinet (KYTC); Federal Highway Administration-Kentucky Division (FHWA-KY); and Federal Transit Administration-Region 4 (FTA-R4). These parties do not need to be signatories to this MOU since Kentucky will submit a revision to the Kentucky SIP to address transportation conformity consultation procedures which will be the same or substantially similar to these procedures.

The 10 parties to this MOU are as follows, hereafter referred to as "all parties":

Ohio-Kentucky-Indiana Regional Council of Governments MPO (OKI)  
Miami Valley Regional Planning Commission (MVRPC)  
Ohio Environmental Protection Agency (Ohio EPA)  
Indiana Department of Environmental Management (IDEM)  
Ohio Department of Transportation (Ohio DOT)  
Indiana Department of Transportation (INDOT)  
Federal Highway Administration-Ohio Division (FHWA-OH)

Federal Highway Administration-Indiana Division (FHWA-IN)  
Federal Transit Administration-Region 5 (FTA-R5)  
United States Environmental Protection Agency-Region 5 (U.S. EPA-R5)

This MOU will be submitted as a revision to the Ohio State Implementation Plan (SIP) required by section 176 of the CAA Amendments of 1990 and will govern conformity determinations in the OKI MPO area. The OKI region consists of Dearborn County, Indiana; Boone, Campbell, and Kenton counties in Kentucky; Butler, Clermont, Hamilton and Warren counties in Ohio. OKI is responsible for the air quality conformity determination for the region's transportation plans, projects and programs in these counties. Clinton County is outside of the OKI region, but is part of the ozone nonattainment area. Ohio DOT is the lead planning agency for Clinton County. MVRPC is the lead planning agency for the cities of Franklin, Carlisle and Springboro in Warren County Ohio.

This MOU will continue to apply to any revised nonattainment area geographies resulting from future designations, or designation revisions for the criteria pollutants within the OKI areas.

Execution of this MOU by each party shall be by signature of each party's representative.

The provisions of this MOU shall be implemented through appropriate procedures, resolutions, or other means, in order to comply with the requirements of all federal and state laws and regulations relating to the conformity determination and development of applicable implementation plan revisions. This MOU along with Attachments A and B defines and delineates the roles, processes, and responsibilities of each signatory to this MOU.

## Attachment A

### Transportation Air Quality Conformity Protocol

#### Conformity Procedures

In accordance with the requirements under section 176 (c)(4)(C) of the CAA, Ohio EPA submitted a state implementation plan (SIP) revision to U.S. EPA on August 17, 1995. This submittal was found to be complete on October 5, 1995. In this submittal, Ohio EPA adopted state rules to meet the requirements of 40 CFR Part 51, Subpart T, as published on November 24, 1993. Transportation conformity is required for all nonattainment or maintenance areas for any transportation related criteria pollutants [40 CFR 51.394 (b)].

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). SAFETEA-LU promotes more efficient and effective Federal surface transportation programs by focusing on transportation issues of national significance, while giving state and local transportation decision makers more flexibility for solving transportation problems in their communities. Section 6011 of SAFETEA-LU specifically addresses transportation conformity. One of the requirements, (f)(4)(E) states,

“Not later than 2 years after the date of enactment of the SAFETEA-LU the procedures under subparagraph (A) shall include a requirement that each state include in the state implementation plan criteria and procedures for consultation required by subparagraph (D) (i), and enforcement and enforceability (pursuant to sections 93.125 (c) and 93.122 (a) (4) (ii) of Title 40, Code of Federal Regulations (CFR) in accordance with the Administrator’s criteria and procedures for consultation, enforcement and enforceability.”

States are no longer required to adopt all of the provisions of the federal conformity rule. The three required conformity SIP elements are:

- 1) consultation procedures [40 CFR 93.105] (Attachment B);
- 2) procedures for determining regional transportation-related emissions [40 CFR 93.122(a)(4)(ii)] (Attachment A); and
- 3) enforceability of design concept and scope and project-level mitigation and control measures [40 CFR 93.125 (c)] (Attachment A).

In accordance with 40 CFR 93.105, the SIP or SIP revision shall include procedures for interagency consultation (federal, state and local), resolution of conflicts, and public consultation as described in Attachment B. Public consultation shall be developed in accordance with the requirements for public participation in 23 CFR Part 450. The SIP shall include procedures to be undertaken by OKI, state and federal DOTs, local air quality agencies and U.S. EPA, prior to making transportation conformity determinations, and by state and local air agencies and U.S. EPA with OKI, state and federal DOTs, in developing applicable implementation plans. OKI and Ohio DOT must provide reasonable opportunity for consultation with all parties and local air quality and transportation agencies as described in Attachment B.

In accordance with 40 CFR 93.122(a)(4)(ii), OKI will not include emissions reduction credits from any control measures that are not included in its transportation plan (TP) or transportation improvement program (TIP) and do not require a regulatory action, in the regional emissions analyses used in the conformity demonstration unless OKI, or FHWA/FTA 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. Prior to making a conformity determination on a TP or TIP, OKI will ensure the project design concept and scope are appropriately identified in the emissions analyses used in the regional conformity demonstration.

In accordance with 40 CFR 93.125(c), prior to making a project-level conformity determination for a transportation project, FHWA/FTA must obtain from the project sponsor and/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 National Environmental Policy Act (NEPA) approval. The written commitments to implement those project-level mitigation or control measures must be fulfilled by the appropriate entities. Prior to making a project-level conformity determination, written commitments will be obtained before such mitigation or control measures are used in a project-level hot-spot conformity analysis [40 CFR 93.125(c)]. Consultation on these commitments will take place as a part of a consultation process prior to the project-level conformity analysis and determination. Interagency consultation for a project-level conformity analysis may occur separately from the consultation used during the development of a regional conformity demonstration.

## Attachment B

### Interagency Consultation Procedures

#### I. General

Ohio EPA will submit these consultation procedures as a revision to the SIP, whereby all parties to this MOU and other organizations with responsibilities for developing, submitting, or implementing provisions of a SIP must consult with each other on the development of the SIP, the TP, the TIP, and associated conformity determinations in accordance with 40 CFR 93.105(b)(1).

These procedures implement the interagency consultation process for OKI and include procedures to be undertaken by all parties to this MOU before making transportation conformity determinations on the TP and TIP in accordance with 40 CFR 93.105(a)(1) and 40 CFR 93.105(c)(3). This area's geographic coverage includes two MPO's, eight counties in three states: Dearborn County, Indiana; Boone, Campbell, Kenton counties in Kentucky; Butler, Clermont, Hamilton and Warren counties in Ohio. OKI's TP and TIP address only the MPO area. Clinton County is outside of the OKI region, but is part of the nonattainment area. Ohio DOT is the lead planning agency for Clinton County. MVRPC is the lead planning agency for the cities of Franklin, Carlisle and Springboro in Warren County, Ohio. These analyses are combined to make a conformity determination for the OKI region. KYTC and IDEM are lead planning agencies for their respective areas not within the OKI region.

Persons of any organizational level in the signatory agencies may participate in the of the interagency consultation group. All consultation will be open to the public, but not necessitate official public notification. Each agency chooses its representative for interagency consultation, and forwards that person's contact info to OKI whose representative is responsible for maintaining the participant list. Changes in representatives will be given to OKI. OKI will in turn redistribute it to all parties. OKI is responsible for convening meetings and providing an agenda.

Interagency consultation frequency will be as needed, unless there is consensus among the consultation parties to meet on a specific schedule (i.e. quarterly, biannually, annually, etc.). In most cases, consultation will be via conference call and/or email unless the interagency consultation group decides that certain items may require a face-to-face meeting and could not be handled via conference call or email.

Early in the TP and/or TIP development process, the MPO will develop a schedule for key activities and meetings leading up to the adoption of the TP, TIP or amendment to the TP or TIP. In developing the draft TP and/or TIP, the MPO brings important air quality conformity TP and/or TIP related issues to all parties in the interagency consultation group for discussion and feedback. OKI is responsible for making all materials used for these discussions available to the interagency consultation group prior to the consultation sessions. Similar consultation will occur with TP amendments if a new regional analysis is required.

Public participation in the development of the TP and/or TIP will be provided in accordance with OKI's adopted Public Participation Procedures in accordance with 23 CFR 450.

OKI will provide the interagency consultation group an opportunity to review the draft conformity analysis. This review will typically take place during the public review period. This is typically done by e-mail. The interagency consultation group will respond promptly to the OKI staff with any comments. Members of the public can comment on the draft conformity analysis in accordance with OKI's adopted public participation procedures. All comments received will be included in the final conformity documentation.

OKI and Ohio EPA will be responsible for maintaining a list of any TCMs that are in the applicable SIP for the OKI area [see section IV a].

The following process provides for final documents to be provided to all interagency consultation group members as required by 40 CFR 93.105(c)(7):

After the OKI Board of Director's (MPO Board) adopts the final TP or TIP and associated conformity determination, OKI will provide the final conformity documentation to FHWA and the interagency consultation group for a federal conformity finding. FHWA will initiate formal consultation and will provide 30 days for written comments from the interagency consultation group members. If appropriate, FHWA will issue the formal conformity finding on behalf of U.S. DOT. The TP update or amendment becomes effective the date the U.S. DOT conformity finding is issued. The TIP update or amendment only becomes effective after the U.S. DOT conformity finding is issued, and the FHWA approves the associated TIP update or amendment into Ohio's State Transportation Improvement Program (STIP). OKI will transmit electronic copies of the final conformity analysis to the interagency consultation group members and place a final copy on OKI's Web site.

## **II. Consultation on Transportation Plans, Transportation Plan Amendments, Transportation Improvement Programs, and Transportation Improvement Program Amendments [40 CFR 93.105]**

Consultation on all non-conformity related aspects of transportation plans, transportation improvement programs, and amendments thereto shall be governed by the applicable participation plans developed pursuant to 23 USC 134/49 USC 5303(i)(5), (i)(6), and (j)(4) and 23 USC 135/49 USC 5304 (f)(3) and (g)(3). Consultation on conformity related aspects of these activities are delineated below.

### **a) Consultation on Transportation Plan and Transportation Plan Amendment Conformity Process**

The federal conformity rules at 40 CFR Part 93 defines the criteria and procedures by which conformity will be established in accordance with 40 CF 93.105 (c), interagency consultation will include the following topics, as appropriate:

- travel forecasting and modeling assumptions;
- latest planning assumptions;
- motor vehicle emission factors to be used in conformity analysis;
- appropriate analysis years;
- determination of exempt projects and evaluating whether projects otherwise exempted (as listed in 93.126 and 93.127) should be treated as non-exempt.;

- determination of which minor arterials and other transportation projects should be considered regionally significant projects 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;
- which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP;
- treatment of regionally significant projects (federal and non-federal funded) assumed in the transportation network and the year of operation;
- treatment of regionally significant projects that span MPO boundaries;
- status of TCM implementation;
- financial constraints and other requirements that affect conformity pursuant to federal statewide and metropolitan planning regulations (this item is not a requirement for consultation);
- reliance on a previous regional emissions analysis;
- conformity process public participation procedures; and
- the need for interim TP (in the event of a conformity lapse).

OKI is the lead agency for development of its transportation plans and amendments thereto. OKI is the lead agency for the development of the associated transportation conformity analyses for the Ohio counties of Butler, Clermont, Hamilton, and Warren, the Kentucky counties of Boone, Campbell and Kenton, and Dearborn County, Indiana. MVRPC, Ohio DOT, KYTC and IDEM are lead agencies for the conformity analyses for their respective areas outside the OKI region. OKI and the interagency consultation group will be provided the opportunity to review the Ohio DOT, and INDOT analyses prior to inclusion in the overall conformity document. The interagency consultation parties will participate in the plan development process, review associated documentation, and collaboratively decide on aspects of the conformity determination that must be determined through interagency consultation according to the regulations at 40 CFR Part 93. Opportunity for comment and participation is provided in the interagency consultation conferencing and by commenting on draft materials as described in the general of this document.

If new designations for criteria pollutants occur that expand analyses areas beyond those defined above, interagency consultation will determine the parties responsible for conducting those analyses in accordance with 40 CFR 93.105(c)(2)(ii).

**b) Consultation and Notification Procedures for Conformity Analysis of TIP and TIP Amendments**

Federal conformity rules at 40 CFR Part 93 defines the criteria and procedures by which conformity will be established. Following OKI's notice that the TIP air quality conformity process has been initiated, OKI and Ohio DOT will coordinate the TIP transportation conformity interagency consultation process. Interagency consultation will include the same topics listed for the transportation plan (see section II. a) as well as the additional topics listed below in accordance with 40 CFR 93.105 (c).

- identification of exempt TIP projects;
- identification of exempt projects which should be treated as nonexempt; and
- determination of an interim TIP (in the event of a conformity lapse) inclusive of projects that can advance during a conformity lapse.

For TIP amendments, OKI and Ohio DOT will consult as identified below:

Consultation required in situations requiring a conformity determination, including but not limited to:

- add non-exempt, regionally significant project that has not been accounted for in the regional emissions analysis; and
- change in non-exempt, regionally significant project that is not consistent with the design concept and scope or the conformity analyses years.

The interagency consultation group will be provided an opportunity to review the draft TIP or TIP amendment conformity documentation concurrent with the TIP public involvement review period. OKI will respond to any questions or comments from the consultation parties within 10 days. After the public review period OKI will adopt the final TIP or TIP amendment and conformity determination. OKI will provide the final TIP or TIP amendment and conformity documentation to the affected state DOT(s). The affected state DOT(s) will forward the documents to FHWA/FTA for final review, incorporation into the STIP and U.S. DOT conformity determination as required by 40 CFR 93.105 (c)(7) and 23 CFR 450.322 of the FHWA/FTA Statewide and Metropolitan Planning rule. Copies of the final TIP or TIP amendment and conformity documentation will be made available on OKI's Web site.

### **III. Transportation Plan and Transportation Improvement Program Interagency Consultation Agency Roles and Responsibilities [40 CFR 93.105(b)(2)]**

#### **Ohio EPA, IDEM**

- Reviews and comments on all aspects of the conformity determinations for the TP and TIP in a timely manner;
- Develops, solicits input on and adopts motor vehicle emission budgets;
- Seeks U.S. EPA approval for the use of motor vehicle emissions factors and mobile source budgets in conformity analyses; and
- Reviews and comments on the transportation plan and TIP development documentation and associated air quality analyses in as agreed in this document.

#### **Ohio DOT, INDOT**

- Participates as a voting member of the OKI Board of Director's and committees as defined by the OKI agency bylaws;
- Project initiator for state sponsored transportation improvement projects in the OKI region;
- Works directly with OKI in providing and reviewing detailed project programming information;
- Defines the design concept and scope of state sponsored transportation improvement projects to conduct regional emissions analysis;
- Promptly notifies OKI of changes in design concept and scope, cost, and implementation year of regionally significant state sponsored projects;
- Assures project-level CO and PM hotspot analyses are included in OKI region transportation project NEPA documentation when required;
- Identifies and commits to project-level CO and PM mitigation measures for state sponsored transportation projects, as required;

- Implements TCMs for which Ohio DOT/KYTC/INDOT is responsible on the schedule that is found in the SIP;
- Maintains a list of TCMs in the SIP and progress toward implementing the TCMs;
- Works with local municipalities and other project sponsors to ensure that the above procedures are also implemented on locally sponsored highway projects; and
- Assists OKI with travel demand modeling and mobile source emissions estimating processes.

For STIP and STIP amendments exclusively involving projects within the Cincinnati-Middletown-Wilmington OH-KY-IN, Combined Statistical Area for NAAQS, but outside MPO boundaries, Ohio DOT, or INDOT will develop, coordinate, prepare and circulate conformity documentation for interagency consultation and public participation.

#### **OKI**

- Develops, coordinates, and circulates transportation plan and TIP supporting and technical documentation for interagency consultation and public participation;
- Conducts transportation plan/TIP and air quality conformity public participation processes;
- Maintains demographic and land use data for travel demand forecasting and regional emissions analysis;
- Works with Ohio DOT, INDOT and local sponsors to define the design concept and scope of projects in the transportation plan and TIP to conduct regional emissions analysis;
- Prepares transportation plan/TIP conformity documentation;
- Includes funding for SIP mandated TCMs in the transportation plan and TIP if required; and
- Adopts transportation plan/TIP, performs the regional emissions analysis and makes conformity determinations.

#### **MVRPC, in the Cincinnati (Franklin, Carlisle, and Springboro) Air Quality Region:**

- Develops, coordinates, and circulates transportation plan and TIP supporting and technical documentation for interagency consultation and public participation;
- Conducts transportation plan/TIP and air quality conformity public participation processes;
- Provides OKI with the design concept and scope of projects in the transportation plan and TIP to conduct regional emission analyses;
- Prepares transportation plan/TIP conformity documentation;
- Includes funding for SIP mandated TCMs in the transportation plan and TIP; and
- Adopts transportation plan/TIP and make conformity determinations.

In the Cincinnati (Franklin, Carlisle, and Springboro) Air Quality Region OKI will:

- Maintains demographic and land use data for travel demand forecasting and regional emissions analysis; and
- Conducts the analysis and prepare transportation plan/TIP conformity documentation.

If a new conformity determination is needed in the Cincinnati Air Quality Region due to transportation plan/TIP amendments in the MVRPC MPO only, MVRPC will be responsible for initiating interagency consultation and conducting the public participation process and OKI will conduct the conformity analysis and provide conformity documentation.

## **U.S. EPA**

- Administers and provides guidance on the CAA and transportation conformity regulations;
- Determines adequacy of motor vehicle emissions budget used for making conformity determinations;
- Reviews and comments on transportation plan and transportation improvement program documentation in keeping with participation plan requirements; and
- Reviews and comments on conformity determinations for the transportation plans and transportation improvement programs.

## **FHWA/FTA**

- Consults with U.S. EPA on transportation conformity determinations.
- Provides guidance on transportation planning regulations;
- Ensures that all transportation planning and transportation conformity requirements contained in 23 CFR Part 450 and 40 CFR Part 93, respectively, are met;
- Works with transit agencies to ensure that conformity procedures are implemented in transit agency-sponsored projects; and
- Makes transportation plan/TIP conformity determinations.

## **IV. State Implementation Plan (SIP) Consultation Process [40 CFR 93.105]**

### **a. SIP Consultation Structure and Process in Ohio**

Ohio EPA is responsible for preparing the SIP. If new transportation control strategies or TCMs are considered necessary to achieve and/or maintain federal air quality standards, the interagency consultation group will discuss possible TCMs for inclusion in the SIP. Ohio EPA will provide and update schedules for SIP development that will be available to all agencies and the public. Public involvement will be in accordance with Ohio EPA's public involvement procedures. Key documents will be posted on Ohio EPA's Web site. SIP development will normally cover inventory development, determination of emission reductions necessary to achieve and/or maintain federal air quality standards, transportation and other control strategies that may be necessary to achieve these standards, contingency measures, and other such technical documentation as required.

Ohio EPA is responsible for informing OKI of any TCMs in the SIP and OKI is responsible for maintaining a list of these TCMs and is responsible for tracking progress toward implementation and will share the list and implementation schedule with the interagency consultation parties. The interagency consultation parties will determine as required by 40 CFR 93.113(c) (1) whether past obstacles to implementation of TCMs, which are behind the schedule established in the SIP, have been identified and are being overcome. The interagency consultation group will assure that state and local agencies provide approval and funding priority to TCMs that are approved in the SIP. The interagency consultation group will also consider revisions to the SIP to remove TCMs or substitute TCMs or other emission reduction measures.

OKI and Ohio DOT develop the travel activity and emissions data that are used by Ohio EPA in establishing the on-road motor vehicle emission inventories for the SIP with consultation from Ohio EPA on the inputs for emission modeling.

If new transportation control strategies are considered that may aid the region to achieve and/or maintain federal air quality standards, Ohio EPA will provide OKI and Ohio DOT with guidance for estimating their impacts on regional emissions. This SIP process will define the motor vehicle emissions budget (MVEB), and its various components, that will be used for future conformity determinations of the TP and TIP. Prior to publishing the draft SIP, OKI, Ohio DOT, KYTC, KEPPC, INDOT and IDEM will have an opportunity to review and comment on the proposed MVEB.

In accordance with 40 CFR 93.105 (b)(2)(iii) and 40 CFR 93.105 (c)(7) Ohio EPA will circulate the draft SIP for public review, and all comments will be responded to in writing prior to adoption of the SIP. The draft will be amended as needed in response to comments received. Ohio EPA will then transmit the final document with amendments, along with the public notice, public hearing transcript and a summary of comments and responses, to U.S. EPA.

**b. Agency Roles and Responsibilities [40 CFR 93.105(b)(2)(i)]**

The following provides a summary on the roles and responsibilities of the different agencies with involvement in development and review of SIP submittals dealing with TCMs or emissions budgets.

**Ohio EPA, KEPPC, IDEM**

- Responsible for air quality monitoring, preparation and maintenance of detailed and comprehensive emissions inventories, air quality modeling, and other air quality planning and control responsibilities;
- Responsible for preparing drafts of SIP submittals, revising those drafts, incorporating other agencies' comments, attending and scheduling public hearings, preparing public hearing transcripts and responding to public comments;
- Responsible for timely SIP submittal to U.S. EPA; and
- Provides concurrence with TCM substitution in the SIP.

**Ohio DOT, KYTC, INDOT**

- Assists in developing regional travel demand forecasts used in the SIP mobile emissions inventories and analyses of new TCMs;
- Assists in developing mobile source inventories and analyses as needed; and
- Participates in reviewing and commenting on draft SIP documents.

**OKI**

- Responsible for developing regional transportation emissions analysis used in the SIP emissions inventories and analyses of new TCMs;
- Monitor and report on implementation of federal TCMs;
- Responsible for providing review and comments on draft SIP documents; and
- Provides concurrence with TCM substitution in the SIP.

**U.S. EPA**

- Receives the Ohio EPA SIP submittals and has the responsibility to act on them in a timely manner;
- Reviews and comments on submittals through various meetings, workshops and hearing that are conducted;
- Provides guidance on the CAA;

- Determines adequacy of motor vehicle emissions budget used for making TP/TIP conformity findings; and
- Provides concurrence with TCM substitution in the SIP.

#### **FHWA/FTA**

- Provides guidance on transportation planning regulation; and
- Participates in the SIP review and comment process.

*Please note: while these are key areas and agencies involved in the development of the SIP, participation in the SIP process by other agencies may occur.*

### **V. Project-level Conformity Determinations for Carbon Monoxide (CO) and/or Fine Particulate Matter (PM) [40 CFR 93.105 (c)(1)(i)]**

Project sponsors are required to conduct project-level conformity analyses by the FHWA/FTA NEPA process. FHWA/FTA are responsible for making all project-level conformity determinations. FHWA/FTA, with the participation of U.S. EPA, identifies the applicable procedures for CO and/or PM analyses. Project sponsors should use the most recently identified procedures. In accordance with 40 CFR 93.105 (c)(1)(i) and other applicable regulations, Ohio DOT, KYTC and INDOT will determine the following:

1. That FHWA/FTA, with U.S. EPA review participation, has approved the project-level CO and/or PM conformity analyses which are included in the project's environmental document prior to initiating federal authorizations.
2. That the design concept and scope of the project has not changed significantly from that used by OKI, Ohio DOT, KYTC and INDOT in their most recent regional transportation conformity analyses of the TP and TIP.

The OKI governing board or policy committee may periodically review and participate with Ohio DOT, KYTC, INDOT and other agencies as appropriate in the update of the CO and/or PM analyses. Through the NEPA process, Ohio DOT, KYTC and INDOT may provide technical guidance to project sponsors who use these procedures.

### **VI. Monitoring of Transportation Control Measures (TCMs) [40 CFR 93.105 (c)(1)(iv)]**

As part of the conformity documentation for a TP and/or TIP, OKI will identify the status of SIP TCMs. If TCM emissions reductions are included as part of the motor vehicle emissions budget, OKI will estimate the portion of emission reductions that have been achieved. If there are funding or scheduling issues for a SIP transportation control measure, OKI will describe the steps being undertaken to overcome these obstacles, including means to ensure that funding agencies are giving these TCMs maximum priority. OKI may propose substitution of a new TCM or TCMs for all or a portion of an existing TCM that is experiencing implementation difficulties (see section VII below).

## **VII. Conflict Resolution [40 CFR 93.105 (d)]**

Conflicts between any parties of this MOU that arise during consultation will be resolved as follows:

1. A statement of the nature of the conflict will be prepared and agreed to by the conflicting parties and shared with the remaining signatories.
2. Disagreeing parties will consult in a good faith effort to resolve the conflict in a manner acceptable to all parties.
3. If they are unsuccessful, the directors of the signatory agencies or their designees shall meet to resolve differences in a manner acceptable to all parties.
4. If none of the above steps produces a satisfactory resolution, the directors of the signatory agencies have 14 days to appeal to the governor(s) of the affected states. OKI will send correspondence to the directors of the signatory agencies informing them that attempts to resolve the conflict have failed and they plan to proceed with their conformity decision or policy in conflict. The 14-day appeal period will commence on the first normal business day following Ohio EPA's and IDEM's receipt of correspondence (whichever is later) via Certified U.S. Mail and/or other certified delivery from OKI. The appeal period will expire at midnight of the 14th calendar day following receipt of such notice.
5. If a party other than Ohio EPA or IDEM appeals to the Governor, that participant must inform the Ohio EPA or IDEM of the Governor's response to the appeal. Ohio EPA or IDEM has an additional 14 calendar days from that notification of appeal to the Governor if it disagrees with the response. If Ohio EPA or IDEM appeals to their respective Governor, the final conformity determination must have the concurrence of the Governor. If Ohio EPA or IDEM does not appeal to the Governor within 14 days, OKI may proceed with the final conformity determinations. The Governor may delegate his or her role in the process, but not to the head or staff of Ohio EPA, Ohio DOT, IDEM, INDOT or OKI.

## **VIII. Public Consultation Procedures [40 CFR 93.105 (e)]**

OKI will follow its adopted public participation procedures when making conformity determinations on transportation plans and programs. These procedures establish a proactive public participation process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by OKI at the beginning of the public comment period and prior to taking formal action on a conformity determination for the TP and TIP, consistent with these requirements and those of 23 CFR 450.316(a). Meetings of OKI are open to the public. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.43. These agencies also shall provide opportunity for public participation in conformity determinations for projects where otherwise required by law.

**MEMORANDUM OF UNDERSTANDING  
TRANSPORTATION CONFORMITY  
CONSULTATION PROCEDURES**

**Parties: OKI, MVRPC, Ohio EPA, Ohio DOT, IDEM, INDOT, FHWA, FTA and U.S.  
EPA**

**LIST of SIGNATORIES**

Note: Signatures appear on separate, multiple pages.

Mark Policinski  
Executive Director  
Ohio-Kentucky-Indiana Regional Council of Governments

Donald R. Spang  
Executive Director  
Miami Valley Regional Planning Commission

Robert J. Shook  
Chairperson

Chris Korleski  
Director  
Ohio Environmental Protection Agency

James G. Beasley, P.E., P.S.  
Director  
Ohio Department of Transportation

Daniel Murray  
Assistant Commissioner  
Indiana Department of Environmental Management, Office of Air Quality

Joseph Gustin, Deputy Commissioner, Planning Operations  
Indiana Department of Transportation

Dennis Decker  
Division Administrator  
Ohio Division  
Federal Highway Administration (*FHWA-OH is lead for U.S. DOT*)

Robert F. Tally, Jr., P.E.  
Division Administrator  
Indiana Division  
Federal Highway Administration

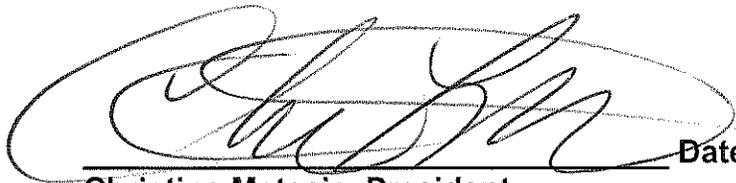
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Regional Administrator  
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Federal Transit Administration

Mary Gade  
Regional Administrator  
Region 5  
U.S. Environmental Protection Agency

**MEMORANDUM OF UNDERSTANDING  
TRANSPORTATION CONFORMITY  
CONSULTATION PROCEDURES**

**Parties: OKI, MVRPC, Ohio EPA, Ohio DOT, IDEM, INDOT, FHWA, FTA and  
U.S.EPA**

Note: Signatures appear on separate, multiple pages.

 Date: 4/10/08

**Christine Maticic, President  
Ohio-Kentucky-Indiana Regional Council of Governments**

 Date: 4/10/08

**Mark Policinski, Executive Director  
Ohio-Kentucky-Indiana Regional Council of Governments**

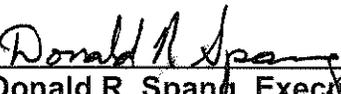
MEMORANDUM OF UNDERSTANDING  
TRANSPORTATION CONFORMITY  
CONSULTATION PROCEDURES

Parties: OKI, MVRPC, Ohio EPA, Ohio DOT, IDEM, INDOT, FHWA, FTA and  
U.S.EPA

Note: Signatures appear on separate, multiple pages.

  
\_\_\_\_\_  
Robert J. Shook, Chairperson

Date: 4/3/08

  
\_\_\_\_\_  
Donald R. Spang, Executive Director  
Miami Valley Regional Planning Commission

Date: 4/3/08

MEMORANDUM OF UNDERSTANDING  
TRANSPORTATION CONFORMITY  
CONSULTATION PROCEDURES

Parties: OKI, MVRPC, Ohio EPA, KEPPC, IDEM, Ohio DOT, KYTC, INDOT, FHWA,  
FTA and U.S. EPA

Note: Signatures appear on separate, multiple pages.

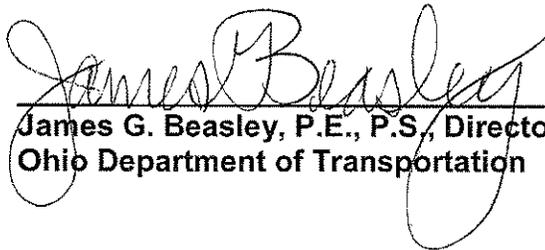


Date: 1/23/08

Chris Korleski, Director  
Ohio Environmental Protection Agency

**MEMORANDUM OF UNDERSTANDING  
TRANSPORTATION CONFORMITY  
CONSULTATION PROCEDURES**  
Parties: OKI, MVRPC, Ohio EPA, Ohio DOT, IDEM, INDOT, FHWA, FTA and  
U.S.EPA

Note: Signatures appear on separate, multiple pages.

 Date: 6/25/08  
James G. Beasley, P.E., P.S., Director  
Ohio Department of Transportation

**MEMORANDUM OF UNDERSTANDING  
TRANSPORTATION CONFORMITY  
CONSULTATION PROCEDURES**

**Parties: OKI, MVRPC, Ohio EPA, Ohio DOT, IDEM, INDOT, FHWA, FTA and  
U.S.EPA**

Note: Signatures appear on separate, multiple pages.



Date: 4/11/2008

**Thomas W. Easterly, Commissioner  
Indiana Department of Environmental Management**

**MEMORANDUM OF UNDERSTANDING  
TRANSPORTATION CONFORMITY  
CONSULTATION PROCEDURES**  
Parties: OKI, MVRPC, Ohio EPA, Ohio DOT, IDEM, INDOT, FHWA, FTA and  
U.S.EPA

Note: Signatures appear on separate, multiple pages.

  
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Joseph Gustin, Deputy Commissioner, Planning Operations  
Indiana Department of Transportation

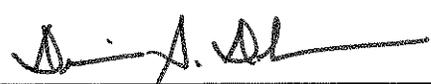
Date: 5/28/08

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**MEMORANDUM OF UNDERSTANDING  
TRANSPORTATION CONFORMITY  
CONSULTATION PROCEDURES**

**Parties: OKI, MVRPC, Ohio EPA, KEPPC, IDEM, Ohio DOT, K... , ... , ... ,  
FTA and U.S. EPA**

Note: Signatures appear on separate, multiple pages.



Date: 2/12/2008

**Dennis Decker, Division Administrator  
Federal Highway Administration, Ohio Division**

MEMORANDUM OF UNDERSTANDING  
TRANSPORTATION CONFORMITY  
CONSULTATION PROCEDURES

Parties: OKI, MVRPC, Ohio EPA, KEPPC, IDEM, Ohio DOT, KYTC, INDOT, FHWA,  
FTA and U.S. EPA

Note: Signatures appear on separate, multiple pages.

For  Date: 2/4/08  
Robert F. Tally, Jr., P.E., Division Administrator  
Federal Highway Administration, Indiana Division

**MEMORANDUM OF UNDERSTANDING  
TRANSPORTATION CONFORMITY  
CONSULTATION PROCEDURES**

**Parties: OKI, MVRPC, Ohio EPA, Ohio DOT, IDEM, INDOT, FHWA, FTA and  
U.S.EPA**

Note: Signatures appear on separate, multiple pages.



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Mary A. Gade, Regional Administrator  
U.S. Environmental Protection Agency, Region 5

Date: 4/15/08