

**MEMORANDUM OF UNDERSTANDING  
AMONG  
OHIO ENVIRONMENTAL PROTECTION AGENCY  
OHIO DEPARTMENT OF TRANSPORTATION  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
FEDERAL HIGHWAY ADMINISTRATION  
FEDERAL TRANSIT ADMINISTRATION  
FOR  
PROCESS AND PROCEDURES FOR THE COORDINATION OF TRANSPORTATION AND TRANSPORTATION RELATED AIR QUALITY PLANNING INCLUDING THE CONSULTATION AND DETERMINATION OF TRANSPORTATION CONFORMITY  
PER  
40 CFR PARTS 51 and 93 AND 23 CFR PART 450.310 (c)**

Prepared by:  
Ohio Environmental Protection Agency  
Division of Air Pollution Control

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August 2013

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## **Introduction**

The Clean Air Act (CAA) and the transportation planning regulations embodied in United States Code (USC) at 23 USC 134 and 23 USC 135 require evaluation of transportation plans, programs and projects for areas that are in nonattainment/maintenance of the National Ambient Air Quality Standards (NAAQS) to ensure consistency with air quality planning efforts. The agencies that work in these areas, which include air quality, transportation, metropolitan planning organizations, public transit operators and local governments, must work together to perform this evaluation.

Certain activities, such as development of new or amended transportation plans (TP) or transportation improvement programs (TIP) or new projects in rural areas require that a conformity determination be made. 40 CFR Part 93.104 specifies the types of activities that require a conformity determination and the frequency of conformity determinations.

This document along with the attached individual metropolitan planning organization (MPO) memorandums of understanding (MOU's) establish a detailed interagency consultation process among the Ohio Environmental Protection Agency (OEPA), the Ohio Department of Transportation (ODOT), the United States Environmental Protection Agency (US EPA), the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and the individual Metropolitan Planning Organizations (MPOs) for the purpose of evaluating the conformity of the transportation plans, transportation improvement programs and projects for the State of Ohio with the requirements of the federal Clean Air Act Amendments and the State Implementation Plan (SIP).

The USEPA and the United States Department of Transportation (US DOT) have promulgated regulations at 40 CFR Parts 51 and 93, 23 CFR Part 450, and 49 CFR Part 613, respectively, describing the procedures to be used in the consultation process. The signatories to this agreement agree to follow the individual MPO transportation conformity

protocols and abide by the consultation procedures in the memorandums of understanding for each MPO.(see appendices for individual MPO MOUs)

To satisfy the requirements of Clean Air Act section 176(c)(4)(E), the implementation plan revision must address the following three requirements of Part 93, Subpart A: (1) 40 CFR 93.105, which addresses consultation procedures, (2) 40 CFR 93.122(a)(4)(ii), which states that conformity State Implementation Plans (SIPs) must require written commitments to control measures prior to a conformity determination if the control measures are not included in a MPO's TP or TIP, and that such commitments be fulfilled; and (3) 40 CFR 93.125(c), which states that conformity SIPs require written commitments to mitigation measures prior to a project-level conformity determination, and that project sponsors comply with such commitments. Following US EPA approval of this MOU and the MPO MOUs which address consultation in each MPO area, as a revision to the SIP, conformity determinations shall be conducted in accordance with the approved SIP as well as federal conformity rules that are not addressed by this document.

This MOU identifies the interagency consultation process for the review and determination of conformity of transportation plans, programs and projects for State of Ohio nonattainment and maintenance areas and also for hotspot analysis. It describes where opportunity for public involvement is to be provided in the process. It details the process to be used by the affected agencies in the development of transportation control measures and provides a process for the resolution of conflicts among the affected agencies.

## **I. Definitions**

AQCA - Air Quality Conformity Analysis  
FHWA - Federal Highway Administration  
FONSI – Finding of No Significant Impact  
FTA - Federal Transit Administration  
HPMS - Highway Performance Monitoring System  
ICG - Interagency Consultation Group  
MPO – Metropolitan Planning Organization  
MVEB - Motor Vehicle Emissions Budget  
NEPA - National Environmental Policy Act  
ODOT – Ohio Department of Transportation  
OEPA – Ohio Environmental Protection Agency  
ROD – Record of Decision  
SIP - State Implementation Plan  
STIP – State Transportation Improvement Program  
TCM - Transportation Control Measures  
TDM - Travel Demand Model  
TIP - Transportation Improvement Program  
TP - Transportation Plan  
US DOT - United States Department of Transportation  
US EPA - United States Environmental Protection Agency  
VMT - Vehicle Miles Traveled

## **II. Affected Agencies**

For purposes of this document, the "affected agencies" shall refer to the following entities:

*The designated point of contact for each affected agency is listed below the agency name.*

1. The Ohio Environmental Protection Agency (OEPA);  
*Director or Designee*
2. The Ohio Department of Transportation (ODOT);  
*Director or Designee*
3. The United States Environmental Protection Agency (US EPA), Region 5;  
*Administrator or Designee*
4. The Federal Highway Administration (FHWA), Ohio Division Office;  
*Administrator or Designee*
5. The Federal Transit Administration (FTA), Region 5;  
*Administrator or Designee*

## **III. General procedures for Transportation Conformity Consultation**

### **Overview**

These procedures implement the interagency consultation process as required in 40 CFR 93.105 for Ohio Transportation Plans, STIP/TIPs, and projects in all nonattainment/maintenance areas, and include procedures to be undertaken by ODOT, FHWA, FTA, OEPA, and USEPA before MPOs and US DOT make conformity determinations.

Transportation conformity is the process to assess the compliance of a TP, STIP/TIP, or transportation project with the air quality SIP. A conformity determination is based on the conformity regulations in 40 CFR Part 93 and, where deemed adequate or approved, consistency between the applicable SIP emissions budgets and the TP and/or the STIP/TIP.

### **a. Interagency Consultation Group**

To conduct consultation, staff involved in conformity issues for their respective agencies shall participate in an air quality conformity task force, hereafter referred to as the "Interagency Consultation Group." The Interagency Consultation Group (ICG) is open to all interested agencies, but typically includes, as a minimum, staff of:

- Federal agencies: FHWA, USEPA, FTA
- State Agencies: ODOT, OEPA
- Local Agencies: MPOs

The ODOT and OEPA shall jointly maintain a directory for the current membership agencies of the ICG. The ICG agencies shall establish the practice of having at least one staff member who can serve as an alternate contact if the primary contact is unavailable. These agencies are responsible to notify ICG upon individual contact or alternate contact changes.

**b. Initial Interagency Consultation Group Meeting 93.105 (b)(2)(ii)**

ODOT, FHWA, or an MPO will initiate ICG consultation when a new conformity demonstration is being advanced for TP's and TIP's. TP and TIP consultation will follow the MOU for the MPO area (see appendices). ODOT shall initiate ICG consultation at the project level.

The initial ICG meeting shall include, but not be limited to, all of the affected agencies listed above. The initial ICG meeting will typically be a conference call, although another method (for example an in-person meeting, e-mail exchange, web meeting, or similar means of communication) may be chosen at the agreement of the other ICG members. The initiating agency shall schedule conference calls and meetings for a time that is acceptable to all other ICG representatives.

The purpose of the initial ICG meeting is to establish consensus regarding the need for a conformity determination (i.e. is the project exempt, regionally significant, etc.), followed by consensus regarding the TP, TIP or project level conformity demonstration schedule, latest planning assumptions, and analysis methodology. If a previous conformity demonstration was made, the ICG may reaffirm the existing practices. The initiating agency shall provide ICG members with meeting background materials with as much lead time as possible prior to the meeting to give ICG members an opportunity for review and preparation. The initiating agency shall respond verbally or by email to all questions and comments from the ICG members. 93.105(b)(2)(iii)

The initiating agency prepares initial Meeting Minutes to document agency concurrence regarding items and all decisions made during the initial consultation meeting, unless mutually agreed that another shall handle the minutes or that minutes are not required. The initiating agency shall forward these meeting minutes and the project list, if the project list is available, to the ICG as soon as reasonably possible. The initiating agency can follow-up with ICG representatives as needed during the consultation period to clarify outstanding issues. The initiating agency shall schedule a follow-up meeting if needed (i.e. agency concurrence cannot be reached 93.105(b)(2)(v)). The initiating agency shall also schedule a meeting if any ICG member(s) requests a meeting to discuss issues under the purview of the ICG as described below, including whether certain events would trigger the need to make a new project level conformity determination. The initiating agency shall be responsible for preparing and distributing the Meeting Minutes from that meeting unless other mutual agreement was made.

Persons of any organizational level in the member agencies may attend meetings of the ICG. Public participation shall be welcomed at meetings, however, holding a meeting shall not necessitate official public notification. 93.105 (b)(2)(ii)

Meeting frequency shall be as needed, unless there is consensus among the federal and state transportation agencies and air quality agencies to meet on a specific schedule (i.e. quarterly, biannually, annually, etc.). 93.105 (b) (2) (iv)

### **c. Affected Agency Responsibilities 93.105 (b)(2)(i)**

The following describes the responsibilities of the state agencies who are signatories to this MOU. These responsibilities may be mirrored or duplicated by the individual MPO's as described in the attached individual MOU's.

OEPA is the state agency responsible for air quality planning. Associated responsibilities of OEPA include the identification of the various sources of air pollutants, including mobile sources, and the development of the SIP. The SIP outlines the control strategies for maintaining and improving air quality.

ODOT is the state agency responsible, in cooperation with the MPOs, for transportation planning and project implementation, and is a key stakeholder in statewide transportation planning and conformity processes. ODOT also develops the statewide transportation improvement plan (STIP) that encompasses the TIPs of all Ohio metropolitan planning organizations (MPO).

USEPA is the federal agency responsible for reviewing and approving the SIP. US EPA is also a participant in the regional transportation planning and conformity processes, and provides comment to US DOT (FHWA & FTA) regarding a regional conformity analysis at state and local levels prior to US DOT making a conformity determination.

FHWA and FTA are the federal agencies responsible for approving the STIP. FHWA and FTA are active participants in the regional transportation planning and conformity processes, and are responsible for making a formal conformity determination regarding Transportation Plans, Transportation Improvement Programs, and projects at the state and local levels.

MPOs are regional transportation planning bodies responsible, in consultation with the state, for conducting urban transportation planning processes for US Census designated urbanized areas. MPOs develop and adopt the TP and TIP for their respective areas. MPOs also make conformity determination's for TPs and TIPs.

### **d. Affected Agency Roles**

40 CFR 93.105 (b)(2)(i) require roles and responsibilities to be addressed as part of the consultation SIP. As such, the following are the expected participation of key state and federal agencies in project level conformity demonstration development and review.

Agency	Roles
ODOT	<ul style="list-style-type: none"> <li>• Coordinates use of travel demand models (TDM) and other travel models with the local MPOs</li> <li>• Manages public review and comment period</li> <li>• Provides a final copy of AQCA document to ICG agencies</li> <li>• Request USDOT conformity determinations, both regional (where Ohio is lead state) and project level</li> </ul>
OEPA	<ul style="list-style-type: none"> <li>• Coordinates development of motor vehicle emissions budgets (MVEBs)</li> <li>• Creates and develops state implementation plans (SIPs)</li> <li>• Develops SIP emissions reflecting the most current US EPA approved emissions model (or delegates responsibility as agreed with other appropriate ICG parties)</li> <li>• Provides draft copy of MVEB and SIP to ICG for review and comment</li> <li>• Reviews AQCA and comments within the allotted time</li> </ul>
FHWA	<ul style="list-style-type: none"> <li>• Coordinates federal review process of the conformity determination</li> <li>• Facilitate additional consultation as necessary if adverse comments are received during consultation</li> <li>• Assists other ICG parties with commitment follow-up</li> <li>• Provides technical guidance and advice on conformity</li> <li>• Reviews conformity documentation</li> <li>• Issues United States Department of Transportation (US DOT) conformity determination letter</li> <li>• Coordinates with other FHWA Divisions for multi-state MPOs</li> </ul>
FTA	<ul style="list-style-type: none"> <li>• Reviews conformity documentation</li> <li>• Reviews AQCA and comments within the allotted time</li> </ul>
USEPA	<ul style="list-style-type: none"> <li>• Promulgates conformity regulations</li> <li>• Approves the SIP and motor vehicle emissions budgets (MVEBs)</li> <li>• Provides technical advice and guidance on conformity</li> <li>• Reviews conformity determination</li> <li>• Reviews final AQCA and submits a recommendation for conformity finding letter</li> </ul>
MPOs	<ul style="list-style-type: none"> <li>• Follow procedures in their individual MOU</li> </ul>
All agencies	<ul style="list-style-type: none"> <li>• Utilize inter-agency consultation</li> </ul>

**e. Consultation on TP, STIP/TIP or Project Level Conformity Analysis**

Consultation on the assumptions and approach to the conformity analysis shall occur during the ICG process, prior to beginning preparation of the AQCA document. The initiating

agency shall consult with the ICG or may request one of the other agencies to initiate consultation with the ICG, at a minimum, on the following topics:

- Identification of exempt projects (by list or reference)(93.105(b)(2)(vi))
- Discussion of which activities trigger a conformity analysis (93.105(c)(2)(i))
- Identification of projects included in each analysis scenario(93.105(b)(2)(vi))
- Evaluating and choosing models and associated methods and assumptions for hot-spot and regional emissions analyses 93.105(c)(1)(i)Determining which minor arterials and other projects are “regionally significant” as required in 93.105(c)(1)(ii) and/or have had a significant change in design concept and scope..
- Determining which projects are projects of “air quality concern”.(c)(1)(iii)
- Discussion of data collection efforts and statewide travel demand model development (93.105(c)(6))
- Determining whether State and local agencies are giving maximum priority to approval and funding for TCMs in approved SIPs (93.105(1)(iv))
- Notification of TP and TIP amendments which only add or delete exempt projects listed in 93.126 and 93.127 [93.105(c)(1)(v)]
- Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas (93.105(c)(1)(vi))

**f. Draft document review and access to documentation 93.105(b)(2)(iii)**

Relevant documentation will be provided by the responsible party at the earliest practical date, but not later than the initiation of formal public participation process. Detailed technical or supporting documentation must be furnished upon request.

ODOT and FHWA will be responsible for distributing draft documents by mutually acceptable methods for review by the ICG. All comment will be addressed to the ICG within a timeframe agreed upon by the ICG.

**g. Process for providing final conformity documentation as Required by 93.105(c)(7)**

Within thirty days of adopting or approving a document or making a determination, the lead agency of an interagency consultation process, including any federal agency, shall provide each final document that is the product of such consultation process, including applicable implementation plans or implementation plan revisions, transportation plans, TIPs, and determinations of conformity, together with all supporting information, to each other agency that has participated in the consultation process. 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.

**IV. State Implementation Plan (SIP) Consultation Process**

OEPA has responsibility for developing state implementation plans (SIPs) and, as such, needs to assure that assumptions made during the emissions analysis process are consistent with those in the appropriate SIPs. The non-transportation components of the SIP will normally be developed independently of the ICG. However, all ICG agencies shall

be provided with information and opportunity to participate in the development of the transportation related portions of the SIP with a focus on the setting of emission budgets and developing Transportation Control Measures (TCMs, if appropriate). Public involvement shall be in accordance with OEPA's public involvement procedures. Key documents shall be posted on OEPA's website. 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.

OEPA may request that ODOT in cooperation with the MPOs provide travel activity data for use in developing the on-road motor vehicle emissions inventory. If new transportation control strategies or TCMs are necessary to achieve and/or maintain federal air quality standards, OEPA may request that ODOT evaluate potential new measures. The ICG shall be convened to discuss possible TCMs for inclusion in the SIP.

OEPA must consult with the ICG on the SIP and shall define the motor vehicle emissions budget (MVEB), and its various components, that will be used for future conformity determinations of the TP and STIP/TIP. Before the draft SIP begins the public review process, the ICG shall have an opportunity to review and comment on the proposed MVEB. Consultation on the SIP budgets may be by conference call, e-mail messages or meeting as defined in the consultation general factors.

OEPA shall circulate the draft SIP for public review, and all comments shall be addressed. OEPA shall then transmit the adopted submittal, along with the public notice, public hearing transcript and a summary of comments and responses, to USEPA and shall make the documents available to the ICG in accordance with the procedures in paragraph III(g).

#### **V. Development of Transportation Control Measures (TCM)**

The affected agencies shall jointly discuss, identify and select reasonably available TCMs to reduce mobile source emissions. The consultation parties and MPO can suggest TCMs for evaluation. Evaluation of TCMs will include emission reductions, costs and implementation factors. TCMs can be suggested by the MPO and/or ODOT however the OEPA shall make final determination of any TCMs to be included within the SIP.

#### **VI. Monitoring of Transportation Control Measures (TCMs)**

The periodic conformity analyses for nonattainment/maintenance areas will include updates of the implementation of TCMs in the applicable SIP. The ICG may request more frequent updates, as needed.

As part of a new conformity demonstration in a nonattainment/maintenance area, the entity initiating the TCM shall list and document the status of TCMs that have not been completed, by comparing progress to the implementation steps in the SIP. Where TCM emissions reductions are included as part of the MVEB, the entity initiating the TCM shall also estimate the portion of emission reductions that have been achieved, either through modeling, collection of real-time data, or by other means acceptable to the ICG. If there are funding or

scheduling issues for a TCM, The entity initiating the TCM shall describe the steps being undertaken to overcome these obstacles, including means to ensure that funding agencies are giving TCMs maximum priority. The entity initiating the TCM may recommend substitution of a new TCM for all or a portion of an existing TCM that is experiencing implementation difficulties. (see Section VII.)

#### **VII. Tracking Implementation of TCMs (40 CFR 93.105 (c)(1)(iv))**

The affected agencies shall work together to identify steps and actions being taken to secure approval or funding for any delayed TCMs in the SIP so that they receive maximum priority for implementation. If further delay is encountered, the affected agencies shall consider whether a SIP revision is necessary to remove or replace the TCMs with other emission reduction measures. TCMs that are delayed shall follow the criteria in accordance to 40 CFR 93.105(c)(1)(iv) & 93.113.

#### **VIII. Substitution of TCMs in the SIP**

After consultation with the ICG, The entity initiating the TCM may recommend to OEPA the substitution of a new TCM in the SIP to overcome implementation difficulties with an existing TCM(s). OEPA shall consider the recommendation and make final determination on any TCM substitutions within the SIP. The substitution shall take place in accordance with SAFETEA-LU (Public Law 109-59) TCM Substitution Procedures, and provide for full public involvement.

#### **IX. Provision for Written Commitments Required by 40 CFR 93.122(a)(4)(ii) and 93.125(c)**

As set forth in CFR 93.122(a)(4)(ii), emission reduction credit from control measures that are not included in the SIP and that do not require a regulatory action in order to be implemented may not be included in the project level conformity demonstration unless the NEPA document includes written commitments, as defined in 40 CFR 93.101, from the appropriate entities to implement those control measures. The written commitments to control measures must be obtained by the initiating party prior to a conformity determination and the written commitments must be addressed by the initiating party. Consultation on these commitments shall take place as a part of the consultation process with the ICG prior to the conformity analysis and determination.

As set forth in 40 CFR 93.125(c), prior to determining that a transportation project is in conformity, the 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 CO, PM<sub>10</sub>, or PM<sub>2.5</sub> 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 the project level conformity determination. These commitments are to be included in the project design concept and scope which is used in the regional emissions analysis required by 40 CFR 93.118 and 119 or used in the project-level hot-spot analysis required by 40 CFR 93.116.

Consultation on these commitments shall take place as a part of the consultation process prior to the conformity analysis and determination.

## **X. Other Interagency Consultation Group Processes and Procedures**

Interagency consultation procedures for specific conformity issues are described below:

### **a. Defining regionally significant projects (93.105 (c) (1) (ii))**

Regionally significant projects are defined as a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel. The MPOs' travel demand model networks may also include other types of facilities for reasons of functionality or connectivity that would not normally be considered regionally significant. ODOT or an MPO shall periodically review with the ICG the types of facilities and projects that are coded in the network but which ODOT or the MPO recommends should not be classified as regionally significant (and which therefore would not trigger a new regional conformity demonstration before they could be amended into a TP or the Ohio STIP/TIP). ODOT or the affected MPO shall document the decisions of the ICG for future reference. The ICG shall also discuss and decide that projects would not be found regionally significant according to the modeling definition above, but should be treated as regionally significant for conformity purposes. This consultation shall take place prior to the beginning of the conformity modeling analysis.

### **b. Determination of significant change in project design concept and scope (93.105 (c) (4) and (5))**

A significant change in design concept and scope shall be one that would alter the coding of the project in the travel demand model. When a project(s) has a change in design concept and scope from that assumed in the most recent conformity demonstration, ODOT shall initiate an update of the conformity demonstration as part of a NEPA reevaluation.

### **c. Determining if exempt projects should be treated as non-exempt (93.105 (c)(1) (iii))**

ODOT shall identify all STIP projects that meet the definition of an exempt project, as defined in the conformity regulations. The list in the STIP shall serve as a list of exempt projects for the ICG for review prior to releasing the project level NEPA conformity demonstration for public comment. If any member of the ICG believes an exempt project has potentially adverse emission impacts or interferes with TCM implementation, they can bring their concern to the ICG for review and resolution. If it is determined by the ICG that the project should be considered non-exempt, ODOT, in cooperation with the MPOs, shall make appropriate changes to the conformity analysis, as required. ODOT or the MPO shall highlight all regionally significant added capacity projects within the regional emissions analysis.

**d. Treatment of non-FHWA/FTA regionally significant projects (93.105(c)(4) & (c)(5))**

Any recipient of federal funding is required to disclose to ODOT or the affected MPO the design concept and scope of regionally significant projects that do not use FHWA or FTA funds. ODOT or the affected MPO shall request that local agencies identify all such projects prior to conducting a new regional level conformity analysis. As part of the conformity demonstration, ODOT or the MPO shall include a written response to any substantive comment received about whether projects of this type are adequately accounted for in the regional emissions analysis.

**e. Projects that can advance during a conformity lapse**

In the event of a conformity lapse in an MPO area or an isolated rural non-attainment/maintenance area, ODOT shall consult with the ICG to identify projects that may move forward.

**f. Events that Trigger a New Conformity Determination (40 CFR 93.105 (c)(2)(i) & 93.104)**

The affected agencies shall work together to evaluate activities that may require a conformity determination. 40 CFR 93.102 (Applicability) provides a list of activities that require a new conformity determination. The ICG will keep members informed of any events that trigger a new conformity determination such as State Implementation Plan budget approvals or adequacy notices and any changes in TCMs in the SIP.

**j. Project Tracking and Conformity Update (23 CFR 450.324 (n)(2))**

The affected agencies shall evaluate federal and non-federal projects in the TPs and STIP/TIPs periodically to determine if the projects' design and scope have been revised and whether the projects are on schedule for implementation. Changes in the design concept, scope, or schedule for any project shall require a new emissions analysis for the next conformity determination.

**XI. Project Level Conformity Determination When New Regional Analysis is Required**

**a. Consultation Structure and Process**

Once a preferred alternative has been identified as part of the National Environmental Policy Act (NEPA) project development process, the ODOT shall initiate interagency consultation leading up to issuance of the associated conformity determination and NEPA project approval. In developing the project level air quality conformity analysis (AQCA), the ODOT brings important AQCA issues to the ICG for discussion and feedback. The ODOT is responsible for transmitting all materials used for these discussions to the ICG prior to the meetings, or on occasion, may distribute materials at the meetings. All materials that are relevant to interagency consultation shall be transmitted to the ICG for discussion and feedback. Similar consultation shall occur with NEPA reevaluations if a new regional analysis is required. It should be noted that NEPA reevaluations requiring a new regional conformity demonstration are few and infrequent.

If the preferred alternative was included in a previous regional conformity determination, there is no need to update the conformity demonstration as long as ODOT affirms the following in the NEPA document: (1) the current scope of the non-exempt project is consistent with the design concept and scope of the projects that were modeled in the most recent conformity demonstration, (2) the analysis year of each non-exempt project is consistent with the open-to-traffic dates in the most recent conformity demonstration, (3) that the previous emissions analysis meets the requirements of 40 CFR 93.118 & 119 and demonstrates conformity.

Public involvement in the development of the NEPA document shall be conducted by ODOT in accordance with the ODOT Public Involvement Procedures.

#### **b. Localized CO, PM<sub>10</sub>, and PM<sub>2.5</sub> Hot Spot Project Level Consultation**

Hot-spot analysis is defined in 40 CFR 93.101 as an estimation of likely future localized CO, PM<sub>10</sub>, and PM<sub>2.5</sub> 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 highway or transit terminals that have a significant number of diesel vehicles, and may use electronic modeling to determine the effects of emissions on air quality. Such an analysis is a means of demonstrating that a transportation project meets the CAA conformity requirements to support state and local air quality goals with respect to potential localized air quality impacts (40 CFR 93.116).

ICG consultation on project level conformity hereby incorporates the criteria and requirements under Section C I-X. Specifically, the interagency consultation group, roles and responsibilities and consultation structure and process and distribution of final documents shall be followed.

In addition it is recognized that as set forth in 40 CFR 93.125(c), prior to determining that a transportation project is in conformity, the 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 CO, PM<sub>10</sub>, or PM<sub>2.5</sub> 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 the project level conformity determination are included in the project design concept and scope which is used in the regional emissions analysis required by 40 CFR 93.118 and 119 or used in the project-level hot-spot analysis required by 40 CFR 93.116. Consultation on these commitments shall take place as a part of the consultation process prior to the conformity analysis and determination.

Also, as required by 93.105 (c)(4) and (c)(5): a significant change in design concept and scope shall be as defined in paragraph X(b) above.

To meet statutory requirements, the Transportation Conformity Rule requires PM hot spot analyses to be performed for projects of air quality concern located in PM<sub>2.5</sub> nonattainment

or maintenance areas. The focus of the rule is on what are called projects of air quality concern. These are certain highway and transit projects that involve significant levels of diesel traffic and require a hot spot analysis. These project types are defined in 40 CFR 93.123(b)(1) as the following:

- New highway projects that have a significant number of diesel vehicles, and expanded highway projects that have a significant increase in the number of diesel vehicles;
- Projects affecting intersections that are at LOS D, E, or F with a significant number of diesel vehicles, or those that will change to LOS D, E, or F because of increased traffic volumes from a significant number of diesel vehicles related to the project;
- New bus and rail terminals and transfer points that have a significant number of diesel vehicles congregating at a single location;
- Expanded bus and rail terminals and transfer points that significantly increase the number of diesel vehicles congregating at a single location.
- Projects in or affecting locations, areas, or categories of sites which are identified in the applicable PM<sub>10</sub>, and PM<sub>2.5</sub> implementation plan or implementation plan submission, as appropriate, as sites of violation or possible violation.

The objective of the hot spot analysis is to make certain that the proposed transportation project will not cause or worsen a violation of the NAAQS. All projects located in PM nonattainment or maintenance areas that have federal funding or approval must be classified as one of the following:

- Exempt: projects that are exempt from air conformity are also exempt from hot spot analysis.
- Projects Not of Air Quality Concern: if a project does not meet the criteria to be classified as exempt, ODOT shall consult with USDOT, USEPA and OEPA to determine the correct classification. Consultation procedures shall be as outlined in Appendix A unless otherwise agreed upon by the ICG.
- Projects of Air Quality Concern: if a project is determined to be a project of air quality concern, consultation procedures shall be as outlined in Appendix A unless otherwise agreed upon by the ICG

Prior to December 20, 2012, if the project will require a qualitative hot spot analysis, the December 2010 EPA/FHWA Guidance document "Transportation Conformity Guidance for Qualitative Hot spot Analyses in PM<sub>2.5</sub> and PM<sub>10</sub> Nonattainment and Maintenance Areas" should be referenced for more information. After December 20, 2012, projects will be required to perform quantitative hot spot analyses using the MOVES 2012a (75 FR 79370). Requirements and guidance for a quantitative analysis are located in the document, "Transportation Conformity Guidance for Quantitative Hot-spot Analyses in PM<sub>2.5</sub> and PM<sub>10</sub> Nonattainment and Maintenance Areas", USEPA, Document EPA-420-B-10-040, issued December, 2010.

## **XII. Public Involvement (Consultation) (40 CFR 93.105(e))**

OEPA, ODOT, and MPO public involvement procedures shall be used to solicit public comment throughout the urban transportation planning and conformity processes. In accordance with 23 CFR 450.316(b)(1)(I), any modification to these procedures requires a minimum public comment period of 45 days before the public involvement process is formally modified.

The public consultation process shall be consistent with the above referenced public involvement procedures. Any charges imposed for public inspection and copying should be consistent with the fee schedule in 49 CFR 7.43.

The transportation planning and conformity consultation processes shall be open to all and provide an opportunity for open participation. A cooperative effort among the affected agencies, transportation stakeholders, and the public shall be made to ensure that the process provides the opportunity for participation of all interested parties.

All public comments for regionally significant projects not receiving FHWA and/or FTA funding or approval which have not been properly reflected in the emissions analysis supporting a proposed conformity finding for the STIP and their amendments shall be addressed in writing by ODOT. These requirements shall work in conjunction with public involvement practices established by 23 CFR part 450, and enhance public involvement not only in the creation of the STIP and statewide transportation plan, but also in project selection and air quality conformity analysis.

## **XIII. Resolving conflicts (40 CFR 93.105(d))**

40 CFR 93.105(d) describes the process for resolving conflicts related to conformity determinations. In the event of a conflict arising between ODOT and OEPA which prevents a conformity determination from being completed, staff of the agencies shall act in good faith to resolve any conflict in a manner acceptable to all parties. If the staff are unsuccessful, the agencies shall notify FHWA and USEPA, in writing of the conflict and the Senior Management within the agencies shall act to resolve differences in a manner acceptable to all parties. Each party shall be responsible for responding to the opposing party's concerns in writing. Once OEPA receives a letter(s) of response from ODOT, and should OEPA determine that the letter(s) of response does not adequately resolve OEPA's concerns, OEPA shall have fourteen days from the date identified by the post mark on the letter(s) of response to appeal to the Governor. If OEPA does not appeal within this fourteen day timeframe, ODOT may request that the final conformity determination proceed. If OEPA appeals to the Governor, then the conformity determination must have the concurrence of the Governor before it is accepted as final. The Governor may delegate his or her role in this process, but not to the director, any of the division chiefs or staff of the State or local air agencies, State department of transportation, or an MPO.

## Execution

**IN WITNESS WHEREOF**, OEPA, ODOT, US EPA, FHWA, and FTA have executed this Memorandum of Understanding (MOU) as indicated by their signatures on the following pages:

**MEMORANDUM OF UNDERSTANDING  
TRANSPORTATION CONFORMITY  
CONSULTATION PROCEDURES**

**Parties: MORPC, LCATS, Ohio EPA, Ohio DOT, FHWA, FTA and U.S. EPA**

Note: Signatures appear on separate, multiple pages.

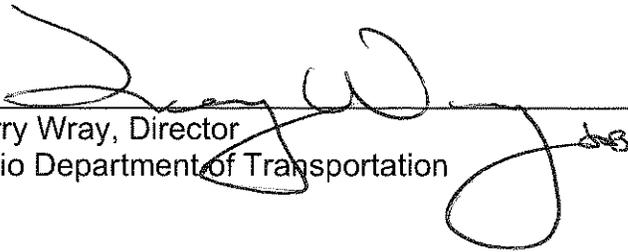


Date: 5/7/14

**Craig W. Butler, Director  
Ohio Environmental Protection Agency**

**MEMORANDUM OF UNDERSTANDING  
TRANSPORTATION CONFORMITY  
CONSULTATION PROCEDURES  
PARTIES: OEPA, ODOT, US EPA, FHWA, and FTA**

Note: Signatures appear on separate, multiple pages.

A handwritten signature in black ink, appearing to read "Jerry Wray", is written over a horizontal line. The signature is stylized and extends below the line.

Jerry Wray, Director  
Ohio Department of Transportation

Date: 11-02-2012

MEMORANDUM OF UNDERSTANDING  
TRANSPORTATION CONFORMITY  
CONSULTATION PROCEDURES  
PARTIES: OEPA, ODOT, US EPA, FHWA, and FTA

Note: Signatures appear on separate, multiple pages.

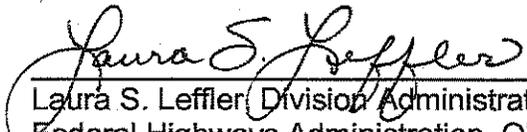


Date: 7-2-2014

Susan Hedman, Regional Administrator  
United States Environmental Protection Agency, Region 5

**MEMORANDUM OF UNDERSTANDING  
TRANSPORTATION CONFORMITY  
CONSULTATION PROCEDURES  
PARTIES: OEPA, ODOT, US EPA, FHWA, and FTA**

Note: Signatures appear on separate, multiple pages.

  
\_\_\_\_\_  
Laura S. Leffler, Division Administrator  
Federal Highways Administration, Ohio Division

Date: 10/26/2012

**MEMORANDUM OF UNDERSTANDING  
TRANSPORTATION CONFORMITY  
CONSULTATION PROCEDURES  
PARTIES: OEPA, ODOT, US EPA, FHWA, and FTA**

Note: Signatures appear on separate, multiple pages.

*Marisol Simon*

Date: 9-25-2013

Marisol Simon, Regional Administrator  
Federal Transportation Administration – Region 5

## **Appendix A**

### **Consultation Procedures As Used Among OEPA, ODOT, US EPA, FHWA, and FTA**

The following outlines the ICG agreed upon consultation process in Ohio for projects that are not of air quality concern. This process may be changed at any time upon full agreement of the ICG with written signature of all parties:

1. ODOT initiates interagency consultation with FHWA, Ohio EPA, and EPA to get concurrence that projects are not of air quality concern. (ODOT provides opening year and design year traffic forecasts by ADT and trucks along with a map or other graphic denoting the project location during the consultation.)
2. Ohio EPA, EPA, and FHWA provide their response. The response shall be either concurrence that the project is not of air quality concern, or comments on why the project should be considered "of concern."
3. ODOT documents the interagency consultation within the environmental document.
4. ODOT documents that the project is part of a conforming TIP and Metropolitan Transportation Plan (MTP) and that the scope of the project has not changed from that included in the TIP/MTP.
5. ODOT includes the following statement within the environmental document:

Based upon review of the project and through interagency consultation, we find that PID "XXXXX" is not a project of air quality concern and is exempt from further hot-spot analysis. Further, PID XXXXX is part of a conforming transportation plan and TIP and the project scope has not changed significantly from that of the plan and TIP. Therefore, PID "XXXXX" has met the statutory requirements of the Clean Air Act and conforms to the state implementation plan."

The following outlines the agreed upon process of agency coordination and review times. This process may be changed at any time upon full agreement of the ICG with written signature of all parties:

1. ODOT requests a project level conformity determination from FHWA and includes the hot-spot analysis with the request;
2. FHWA requests EPA and OEPA to review the hot spot analysis;
3. EPA/OEPA provides concurrence or comments within 30 days of FHWA request;
4. FHWA provides a conformity determination to ODOT within 45 days of ODOT's request;
5. FHWA provides a copy of the conformity determination to EPA and OEPA;
6. ODOT includes FHWA conformity determination letter in the NEPA documents.

Note: FHWA and EPA will consider expedited requests for conformity as necessary.

**Attachment A to I**

**MOU's Between OEPA, ODOT, US EPA, FHWA, FTA and the  
Individual MPOs**