

## TO BE RESCINDED

3745-101-04            **Consultation.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see the last paragraph of rule 3745-101-02 of the Administrative Code titled "Incorporation by reference."]

(A) This rule provides procedures for federal, state and local interagency consultation, and resolution of conflicts, and public consultation. Public consultation procedures will be developed in accordance with the requirements for public involvement in 23 CFR Part 450.

(1) Such consultation procedures shall be undertaken by MPOs, Ohio DOT, and USDOT with Ohio EPA and local air agencies and USEPA before making conformity determinations, and by Ohio EPA and local air agencies and USEPA with MPOs, the Ohio DOT, and USDOT in developing applicable implementation plans.

(2) Before this chapter is approved by USEPA, MPOs before making any conformity determinations shall provide reasonable opportunity for consultation with Ohio EPA, local air and transportation agencies, Ohio DOT, USDOT, and USEPA, including consultation on the issues described in paragraph (C)(1) of this rule.

(B) Interagency consultation procedures: general factors.

(1) Representatives of the MPOs, Ohio EPA, local air agencies, and Ohio DOT and local transportation agencies shall undertake an interagency consultation process in accordance with this rule with each other and with local or regional offices of USEPA, FHWA, and FTA on the development of the implementation plan, of the list of TCMs in the applicable implementation plan, of the transportation plan, of the TIP, of the STIP and of the statewide transportation plan, of any revisions to the preceding documents, and of all conformity determinations required by this chapter.

(2)

(a) Ohio EPA 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 applicable implementation plans and control strategy implementation plan revisions and the list of TCMs in the applicable implementation plan.

- (b) The respective MPO 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 amendments or revisions thereto. The respective MPO 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 any determinations of conformity under this rule for which the MPO is responsible.
- (c) In the case of non-metropolitan areas, Ohio DOT 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 statewide transportation plan, the STIP, and any amendments or revisions thereto.
- (3) In addition to the lead agencies identified in paragraphs (B)(2)(a) and (B)(2)(b) of this rule, other agencies entitled to participate in any interagency consultation process under this rule include Ohio DOT (headquarters and each affected regional or district office), each affected MPO, the FHWA regional office and state division, the FTA regional office, Ohio EPA, and local air agencies, and in interstate nonattainment areas and interstate maintenance areas the state and local transportation agencies and state and local air quality agencies from the states in the interstate nonattainment area and interstate maintenance area.
- (4)
- (a) It shall be the role and responsibility of each lead agency in an interagency consultation process, as specified in paragraphs (B)(2)(a) and (B)(2)(b) of this rule, to confer with all other agencies identified under paragraph (B)(3) of this rule with an interest in the document to be developed; provide all appropriate information to those agencies needed for meaningful input; solicit early and continuing input from those agencies; conduct the consultation process described in the applicable portions of paragraph (B) of this rule, where required; assure policy-level contact with those agencies; consider the views of each such agency and respond to those views in a timely, substantive written manner prior to any final decision on such document; and assure that such views and written response are made part of the record of any decision or action.
- (b) It shall be the role and responsibility of each agency specified in paragraph (B)(3) of this rule, when not fulfilling the role and

responsibilities of a lead agency, to confer with the lead agency and other participants in the consultation process; review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a timely manner; attend consultation and decision meetings; assure policy-level contact with other participants; provide input on any area of substantive expertise or responsibility, including planning assumptions, modeling, information on status of TCM implementation, and interpretation of regulatory or other requirements; and provide technical assistance to the lead agency or consultation process in accordance with this paragraph when requested.

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

(a) Ohio EPA, unless another agency is identified via a MOU or contract with Ohio EPA, shall be responsible for developing:

(i) Emissions inventories,

(ii) Emissions budgets,

(iii) Air quality modeling,

(iv) Attainment demonstrations,

(v) Control strategy implementation plan revisions,

(vi) Regulatory TCMs, and

(vii) Updated motor vehicle emissions factors.

(b) The respective MPO shall be responsible for:

(i) Developing transportation plans and TIPs,

(ii) Evaluating TCM transportation impacts,

(iii) Developing transportation and socioeconomic data and planning assumptions for use in air quality analysis to determine conformity of transportation plans, TIPs, and projects, and providing such data and planning assumptions to other agencies

for air quality analysis,

- (iv) Monitoring regionally significant projects,
- (v) Developing system- or facility-based or other programmatic (non-regulatory) TCMs,
- (vi) Providing technical and policy input on emissions budgets,
- (vii) Performing transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs needed for conformity assessments, or providing Ohio DOT with the data for this purpose,
- (viii) And making conformity determinations on transportation plans, TIPs, and projects.

(c) The Ohio DOT shall be responsible for:

- (i) Developing the statewide transportation plan and STIP,
- (ii) Performing transportation modeling for MPOs as agreed to by the MPO,
- (iii) Providing technical input on proposed revisions to motor vehicle emissions factors,
- (iv) Distributing draft and final project environmental documents to other agencies,
- (v) Convening air quality technical review meetings on specific projects when requested by other agencies or as needed,
- (vi) And coordinating the conformity process and making conformity determinations for rural nonattainment areas.

(d) FHWA and FTA shall be responsible for:

- (i) Assuring timely action on final findings of conformity, after consultation with other agencies as provided in this rule and 40

CFR section 51.402,

(ii) Providing guidance on conformity and the transportation planning process to agencies in interagency consultation.

(e) USEPA shall be responsible for:

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

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

(iii) Reviewing conformity findings.

(6) It shall be the affirmative responsibility of the lead agency to initiate the process by preparing an initial draft of the document, together with necessary supporting information; notifying other potential participants in the consultation process; circulating the draft document to those expressing an interest in participating; and convening consultation meetings early in the process of decision on the final document. Such lead agency shall convene technical meetings as necessary, and assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.

(a) Regular consultation on major activities such as the development of an implementation plan or any control strategy implementation plan revision, the development of a transportation plan, the development of a TIP, or any determination of conformity on transportation plans or TIPs, shall include meetings beginning no later than three months prior to the date a final document is required (or the date on which such agency begins its own work on such document, if later). Representatives at the policy level of each agency shall receive adequate notice of such meetings. In addition, technical meetings shall be convened as necessary.

(b) Each lead agency with the responsibility for preparing the final document subject to the interagency consultation process shall confer with all other agencies identified under paragraphs (B)(1) to (B)(5) of this rule with an interest in the document to be developed, provide all appropriate information to those agencies needed for meaningful input, and, prior to taking any action, consider the views of each such agency and respond to those views in a timely, substantive written manner 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.

- (7) Within sixty days of adopting or approving a document or making a determination, each lead 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, 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.
- (8) A meeting that is scheduled or required for another purpose may be used for the purposes of consultation if the conformity consultation purpose is identified in the public notice for the meeting.

(C) Interagency consultation procedures: specific processes.

- (1) An interagency consultation process in accordance with paragraph (B) of this rule involving the MPO, Ohio EPA and local air agencies, Ohio DOT and local transportation agencies, USEPA, and USDOT shall be undertaken for the following:
  - (a) Evaluating and choosing each model, or models, and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses, including VMT forecasting, to be initiated by the lead agency and conducted in accordance with paragraph (B)(6) of this rule;
  - (b) Determining which minor arterials and other transportation projects, 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, should be considered "regionally significant" for the purposes of regional emissions analysis, and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP. This consultation process is to be initiated by the lead agency and conducted in accordance with paragraph (B)(6) of this rule;
  - (c) Evaluating whether projects otherwise exempted from meeting the requirements of this chapter, according to 40 CFR 93.126 and 40 CFR

93.127, should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. This consultation process is to be initiated by the lead agency and conducted in accordance with paragraph (B)(6) of this rule;

- (d) Making a determination, as required by 40 CFR 93.113(c)(1), 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 is to be initiated by the lead agency and conducted in accordance with paragraph (B)(6) of this rule. 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;
  - (e) Identifying, as required by 40 CFR 93.123(b), projects located at sites in PM<sub>10</sub> nonattainment areas with vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites with violations verified by monitoring, and which therefore require quantitative PM<sub>10</sub> hot-spot analysis. This consultation process is to be initiated by the lead agency and conducted in accordance with paragraph (B)(6) of this rule;
  - (f) Receiving notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in 40 CFR 93.126 or 40 CFR 93.127, to be initiated by the lead agency and conducted in accordance with paragraph (B)(6) of this rule, other than the requirement that such notice be provided prior to final action;
  - (g) Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by 40 CFR 93.109(1)(2)(iii).
- (2) An interagency consultation process in accordance with paragraph (B) of this rule involving the MPO, Ohio EPA and local air agencies, Ohio DOT and local transportation agencies, shall be undertaken for the following:
- (a) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in 40 CFR 93.104. This consultation process is to be initiated by the lead agency and conducted in accordance with paragraph (B)(6) of this rule; and

- (b) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins. This consultation process is to be initiated by the lead agency and conducted in accordance with paragraph (B)(6) of this rule.
- (3) Where the metropolitan planning area does not include the entire nonattainment or maintenance area, an interagency consultation process in accordance with paragraph (B) of this rule involving the MPOs and Ohio DOT shall be undertaken for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area. This consultation process is to be initiated by the lead agency and conducted in accordance with paragraph (B)(6) of this rule.
- (4) A process involving all entities pursuing non-federally funded regionally significant projects (including local transportation agencies) to ensure 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), including those by recipients of funds designated under Title 23 USC or the federal transit laws, are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed.
- (5) An interagency consultation process, in accordance with paragraph (B) of this rule, involving the MPO and other recipients of funds designated under Title 23 USC or the Federal Transit Act shall be undertaken for assuming the location and design concept and scope of projects which are disclosed to the MPO, as required by paragraph (C)(4) of this rule, but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of 40 CFR 93.122. This consultation process is to be initiated by the lead agency and conducted in accordance with paragraph (B)(6) of this rule.
- (6) An interagency consultation process, in accordance with paragraph (B) of this rule, involving the MPO, Ohio EPA and local air agencies, Ohio DOT and local transportation agencies, shall be undertaken for 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). This consultation process is to be initiated by the lead agency and conducted in accordance with paragraph (B)(6) of this rule.
- (7) A process for providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each

agency after approval or adoption. This process is applicable to all agencies described in paragraph (A)(1) of this rule, including federal agencies.

(D) Resolving conflicts.

- (1) Any conflict concerning conformity process among state agencies or between state agencies and an MPO shall be submitted for resolution to the governor if the conflict cannot be resolved by the heads of the involved agencies. Before submittal to the governor, 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.
- (2) Ohio EPA has fourteen calendar days to appeal a proposed determination of conformity, or other policy decision under this chapter, to the governor after Ohio DOT or MPO has notified Ohio EPA of the resolution of all comments on such proposed determination of conformity or policy decision.
  - (a) Such fourteen day period shall commence when the MPO or Ohio DOT has confirmed receipt by the director of Ohio EPA of the resolution of the comments of Ohio EPA. If Ohio EPA appeals to the governor, the final conformity determination shall have the concurrence of the governor. Ohio EPA shall provide notice of any appeal under this paragraph to the MPO and Ohio DOT. If Ohio EPA does not appeal to the governor within fourteen days, the MPO or Ohio DOT may proceed with the final conformity determination.
  - (b) In the case of any comments with regard to findings of fiscal constraint under 40 CFR 93.108 or to the air quality effects of any proposed determination of conformity, Ohio DOT has fourteen calendar days to appeal a proposed determination of conformity, or other policy decision under this chapter, to the governor after the MPO has notified Ohio EPA or Ohio DOT of the resolution of all comments on such proposed determination of conformity or policy decision. Such fourteen day period shall commence when the MPO has confirmed receipt by the director of the Ohio EPA or Ohio DOT of the resolution of the comments of Ohio DOT. If Ohio DOT appeals to the governor, the final conformity determination shall have the concurrence of the governor. Ohio DOT shall provide notice of any appeal under paragraph (D) of this rule to the MPO and Ohio EPA. If Ohio DOT does not appeal to the governor within fourteen days, the MPO may proceed with the final conformity determination.
- (3) The governor may delegate the role of hearing any such appeal under paragraph

(D) of this rule 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 Ohio EPA or to any local air agency, to Ohio DOT, to a state transportation commission or board, to any agency that has responsibility for only one of these functions, or to an MPO.

(E) Public consultation procedures.

- (1) Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish and continuously implement a proactive public involvement process which provides opportunity for public review and comment and 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 the requirements of 23 CFR Part 450, including 23 CFR 450.316(b), 23 CFR 450.322(c), and 23 CFR 450.324(c) as in effect on the effective date of this chapter. Any charges imposed for public inspection and copying should be no more stringent than with the fee schedule contained in 49 CFR 7.43.
- (2) In addition, any such agency shall 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.
- (3) Any such agency shall also provide opportunity for public involvement in conformity determinations for projects to the extent otherwise required by law, e.g. NEPA. The opportunity for public involvement provided under this paragraph shall include access to information, emissions data, analyses, models and modeling assumptions used to perform a conformity determination, and the obligation of any such agency to consider and respond to significant comments. No transportation plan, TIP, or project may be found to conform unless the conformity determination has been subject to a public involvement process in accordance with this paragraph, without regard to whether the USDOT has certified any process under 23 CFR Part 450.

Effective:

Five Year Review (FYR) Dates: 09/24/2015

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Certification

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Date

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