

Appendix D: Conformity Consultation Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING
AMONG
KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY
INDIANA DEPARTMENT OF TRANSPORTATION
KENTUCKY TRANSPORTATION CABINET
INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
LOUISVILLE METRO AIR POLLUTION CONTROL DISTRICT
TRANSIT AUTHORITY OF RIVER CITY
FEDERAL HIGHWAY ADMINISTRATION
FEDERAL TRANSIT ADMINISTRATION
ENVIRONMENTAL PROTECTION AGENCY
AND
OTHER AFFECTED AGENCIES
FOR
PROCESS AND PROCEDURES FOR CONSULTATION AND DETERMINATION OF
TRANSPORTATION CONFORMITY PER 40 CFR PARTS 51 AND 93**

Introduction

The Clean Air Act (CAA) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) require evaluation of transportation plans for areas that are nonattainment of the National Ambient Air Quality Standards (NAAQS) for transported-related criteria pollutants to ensure consistency with air quality planning efforts. The agencies that work in these areas which include the local governments and air quality and transportation agencies must work together to perform this evaluation.

The United States Environmental Protection Agency and the United States Department of Transportation have promulgated regulations at 40 CFR Parts 51 and 93 and 23 CFR Part 450 describing the procedures to be used in the consultation process. Certain activities such as the update or amendment of transportation plans (TP) or transportation improvement programs (TIP) may require that a conformity determination be made.

This memorandum of understanding (MOU) establishes a detailed interagency consultation process among the Kentuckiana Regional Planning and Development Agency, the Indiana Department of Transportation, the Kentucky Transportation Cabinet, the Indiana Department of Environmental Management, the Louisville Metro Air Pollution Control District, the Transit Authority of River City, the Federal Highway Administration, the Federal Transit Administration, and the Environmental Protection Agency for the purpose of evaluating the consistency of the transportation plans for the Louisville transportation planning study area with the requirements of the federal Clean Air Act Amendments and the State Implementation Plans (SIPs) of Indiana and

Kentucky. The Louisville transportation planning study area consists of Clark and Floyd counties and 0.1 square miles in Harrison County in Indiana and Bullitt, Jefferson, and Oldham counties in Kentucky.

This MOU identifies the interagency consultation process for the review and determination of conformity of transportation plans, programs, and projects implemented by the Kentuckiana Regional Planning and Development Agency for the Louisville transportation planning study area. It outlines the process to be used by the participating and affected agencies concerning general matters of transportation conformity and in the update or amendment of the transportation plan (TP) and transportation improvement program (TIP). It details the process to be used by the Indiana Department of Environmental Management (IDEM) and the Louisville Metro Air Pollution Control District (LMAPCD) in the development and inclusion of transportation control measures in the State Implementation Plans (SIPs). Even though the Kentucky Energy and Environment Cabinet (KEEC) is not a participating agency, the process used by KEEC is expected to be similar to the one described in this document for IDEM and LMAPCD. It also provides a process for the resolution of conflicts among the affected and participating agencies.

When reviewing KIPDA's conformity assessment, USEPA Region 4 will focus on issues related to Kentucky and USEPA Region 5 will focus on issues related to Indiana. FHWA-KY and FTA Region 4 are the lead agencies for the Louisville metropolitan area and will coordinate the review.

The meaning of terms used in this document shall be consistent with the definitions provided in the federal conformity rule, 40 CFR 93. Specifically, section 40 CFR 93.101 shall be the source of definitions, if applicable.

I. Participating and Affected Agencies

- A. For purposes of this document, the "participating agencies" shall refer to the following:

The designated point of contact for each participating agency is listed after the agency name.

1. The Kentuckiana Regional Planning and Development Agency (KIPDA); *Executive Director or designee*
2. The Indiana Department of Transportation (INDOT); *Division Chief of Planning or designee*
3. The Kentucky Transportation Cabinet (KYTC); *Director of the Division of Planning or designee*
4. The Indiana Department of Environmental Management (IDEM); *Branch Chief of Air Programs or designee*

5. Louisville Metro Air Pollution Control District (LMAPCD); *Director or designee*
6. The Transit Authority of River City (TARC); *Executive Director or designee*
7. The Federal Highway Administration, Indiana Division Office (FHWA-IN); *Indiana Division Administrator or designee*
8. The Federal Highway Administration, Kentucky Division Office (FHWA-KY); *Kentucky Division Administrator or designee*
9. The Federal Transit Administration Region 4 (Region 4 FTA); *Administrator or designee*
10. The Federal Transit Administration Region 5 (Region 5 FTA); *Administrator or designee*
11. The US Environmental Protection Agency Region 4 (Region 4 EPA); *Administrator or designee*
12. The US Environmental Protection Agency Region 5 (Region 5 EPA); *Administrator or designee* and
13. the local governments in the Louisville transportation planning study area. *executive officer or designee*

B. For purposes of this document, the "affected agency" shall refer to the following:

The designated point of contact for the affected agency is listed after the agency's name.

1. Kentucky Energy and Environment Cabinet (KEEC); *Director or designee*

KIPDA is the metropolitan planning organization responsible for implementing the urban transportation planning process, which includes the development of transportation plans and transportation improvement programs, for the Louisville, KY-IN transportation planning study area.

INDOT and KYTC are state agencies responsible for transportation planning and project development and are key stakeholders in the

Louisville, KY-IN transportation planning study area's transportation planning and conformity processes.

IDEM, LMAPCD, and KEEC are the agencies responsible for air quality planning in the nonattainment and maintenance areas in the Louisville, KY-IN transportation planning study area. Associated responsibilities of IDEM, LMAPCD, and KEEC include the identification of the various sources of air pollutants and the development of the SIPs. The SIPs outline the control strategies for maintaining and improving air quality.

TARC is the provider of transit services in the Louisville, KY-IN transportation planning study area. TARC is a key stakeholder in the area's transportation planning and conformity processes.

FHWA and FTA are the federal agencies responsible for approving the Indiana and Kentucky Statewide Transportation Improvement Programs (STIPs). FHWA and FTA are active participants in the regional transportation planning and conformity processes and are responsible for making a formal conformity determination regarding the region's Transportation Plan and Transportation Improvement Program.

USEPA is the federal agency responsible for reviewing and approving the SIPs. USEPA is also a participant in the regional transportation planning and conformity processes and provides comment to USDOT (FHWA & FTA) regarding a regional conformity analysis prior to USDOT making a conformity determination.

The local governments include agencies which are responsible for transportation planning and project development and which are key stakeholders in the Louisville, KY-IN transportation planning study area's transportation planning and conformity processes.

Each of the agencies listed in I.A agrees to work to maintain consistency of the transportation plans and programs for the Louisville transportation planning study area with the federal Clean Air Act Amendments and the State Implementation Plans of Indiana and Kentucky. To that end, each of these agencies shall perform the roles and responsibilities listed below within their respective jurisdiction. The agency listed in I.B. will be invited to participate in the activities undertaken to maintain the consistency mentioned above and to perform roles similar to those of their counterparts in I.A.

II. General Coordination

Overview

The participating agencies agree to consult on the matters listed in this section, which are related to transportation conformity but not directly related to the development of the SIPs, TP, TIP, and projects. KEEC will also be invited to participate.

- A. Forums for regular consultation/organizational involvement on KIPDA's committees. At the discretion of the KIPDA Transportation Policy Committee, the participating agencies shall be invited to serve on the KIPDA Transportation Technical Coordinating Committee (TTCC). In addition, these agencies shall be invited to participate on the interagency consultation group, the main group for conformity consultation. KEEC shall also be invited to serve on the TTCC and interagency consultation group. The agencies that accept the invitation to serve on TTCC may serve as voting or advisory members
- B. Notification of scheduled meetings. KIPDA, INDOT, KYTC, IDEM, LMAPCD, and TARC shall notify the other participating and affected agencies of the time and location of regularly scheduled meetings of the appropriate committees, subcommittees, workgroups, panels, etc. The agency associated with the committee, subcommittee, workgroup, panel, etc. shall be the lead agency and have responsibility for providing the notification. If available, an agenda and supporting materials shall be provided in advance of the meeting.
- C. Distribution of draft documents before formal adoption. Each of the participating agencies identified as the lead in II.B above shall be responsible for coordinating the distribution of relevant draft documents to the other participating and affected agencies, if applicable, prior to approval by the agency or the executive board of the agency. KEEC shall be requested to coordinate the distribution of relevant draft documents to the other affected and participating agencies, if applicable, prior to approval by the agency or the executive board of the agency.
- D. Technical analysis - HPMS data. INDOT and KYTC are responsible for providing current Highway Performance Monitoring System (HPMS) data to KIPDA.
- E. Consultation on transportation modeling and technical analysis assumptions. The participating agencies shall consult on data collection, the development of transportation models, the methodologies and assumptions to be used in the application of the regional travel demand forecasting model, the minimum network to be used in the regional emission analyses, and off-model calculations. KEEC shall be invited to participate in these discussions. KIPDA is responsible for the development and application of transportation models as part of its responsibilities under 23 CFR part 450 and shall serve as the lead agency

and arrange the consultation. KIPDA's responsibilities include the forecasting of travel based on the forecast of growth and development developed by local land use planning agencies and adopted by the KIPDA Transportation Policy Committee. A meeting may be requested by any of the participating or affected agencies to discuss this subject. If requested, the meeting shall be called by KIPDA, and notice will be sent to the other participating and affected agencies not less than seven calendar days before the meeting.

F. Air quality modeling coordination. The participating agencies shall consult on the methodologies and assumptions to be used in developing the parameters for the EPA-approved emissions model. KEEC shall be invited to participate in these discussions. IDEM and LMAPCD shall be responsible for running the required EPA-approved emissions model and developing emission rates for their respective jurisdictions. With the knowledge of the other participating and affected agencies and the agreement of the agency to which the responsibility is being delegated, this responsibility may be delegated by either/both agency/ies to a designated agency. In that case, the delegating agency/ies shall:

1. coordinate with the designated agency to provide the input data necessary to execute the emissions model and develop emission factors,
2. ensure that the information is consistent with the SIP for their jurisdiction, and
3. provide KIPDA with copies of all documentation of this coordination.

KEEC shall be requested to provide the necessary coordination for developing emission factors, ensure consistency with the Kentucky SIP, and provide documentation in a manner similar to IDEM and/or LMAPCD.

A meeting may be requested by any of the participating or affected agencies to discuss this subject. If requested, the meeting shall be called by the appropriate agency (KIPDA if no other agency does so), and notice will be sent to the other agencies not less than seven calendar days before the meeting.

III. Coordination for Transportation Conformity for Transportation Plans and Transportation Improvement Programs

The participating agencies agree to implement the following process each time the transportation plan (TP) or transportation improvement program (TIP) is updated or amended. KEEC will also be invited to participate in the process.

- A. Overview of the process. When the TP and/or TIP is/are updated or amended, steps C through N shall be undertaken, as appropriate. As the lead planning agency, KIPDA shall be responsible for developing the updated or amended TP and/or TIP and for managing and facilitating the conformity process within the Louisville transportation planning study area. For any of the issues discussed in E through N below, consultation may be accomplished by a meeting of any or all of the participating and affected agencies or by a less formal means depending on the quantity and significance of the project changes involved in the update or amendment and the wishes of the agencies involved in the consultation. A meeting may be requested by any of the participating or affected agencies to discuss the subjects listed below. If requested, the meeting shall be called by KIPDA, and notice will be sent to the other agencies not less than seven calendar days before the meeting.
- B. Schedule preparation and approval. Consistent with USDOT's metropolitan planning regulations, an update of the TP is required at least every four years, and an update of the TIP is required at least every four years. When the TP or TIP is being updated, KIPDA staff shall develop a schedule for the update and shall circulate it to the participating and affected agencies for their review and comment. The schedule shall include a reasonable period of time for all efforts necessary to accomplish the update *including time for the issuance of a federal conformity determination*. The schedule shall be presented to the Transportation Technical Coordinating Committee and to the Transportation Policy Committee for their approvals.
- C. Estimate of available funds. As per 40 CFR 93.108, TPs and TIPs must be fiscally constrained consistent with USDOT's metropolitan planning regulations. To assist in determining the fiscal constraints of the transportation plan and transportation improvement program, INDOT and KYTC shall provide KIPDA with estimates of available federal and state funds necessary to meet the fiscal constraint requirement of the TP and/or TIP.
- D. Project identification and data. KIPDA shall--as part of the TP or TIP update or amendment process--issue a call for projects from INDOT, KYTC, IDEM, LMAPCD, KEEC, TARC, the local units of government, and any other project sponsors. This call for projects shall include requests for information about regionally significant projects regardless of funding source. KIPDA shall coordinate with its Transportation Technical Coordinating Committee (TTCC) to identify the projects that shall be included in the TP and/or TIP. Data related to the projects and plans shall be provided to KIPDA by the appropriate project sponsor.

- E. Project tracking KIPDA, in consultation with the participating agencies, shall evaluate the projects in the document (TP or TIP) being updated to determine if their design concept and/or scope have been revised and whether the projects are on schedule for implementation. KEEC shall be invited to participate in these discussions. Each project sponsor shall be responsible for tracking this information concerning its projects. The project sponsor shall report to KIPDA any change in design concept, scope, or schedule as soon as it is known.

The TIP shall include a list of all projects included collectively in the regional emissions analysis as part of the base case for the purposes of the air quality conformity analysis in accordance with applicable sections of 23 CFR 450, 49 CFR 520, and 40 CFR 93.

- F. Consideration of non-federal projects. During the development stage of an updated TP and/or TIP, the project sponsors shall transmit to KIPDA plans for the construction of all known 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). Changes to such plans shall be disclosed immediately. KIPDA shall consult with the participating agencies to identify the appropriate assumed location and design scope for underdefined projects per 40 CFR 93.105(c)(5).
- G. Initial Consultation Meeting/Conference Call/E-mail Exchange. Depending on the scope of the update/amendment, the initial consultation meeting may follow any of three formats.
1. When the normal format is used, the participating and affected agencies will be contacted, and a meeting/conference call will be arranged. The following information will be transmitted to the participating and affected agencies at least 7 days prior to the meeting/conference call.
 - (a) the schedule for the update/amendment;
 - (b) a draft list of projects/project changes including (based on the information received in C through F) an indication of whether they are exempt or non-exempt, regionally significant or non-regionally significant, the open-to-traffic date, and the proposed analysis scenario (if the project is to be included in the regional emissions analysis);
 - (c) the horizon year of the transportation plan;
 - (d) the proposed conformity test methodology/ies and analysis years;

- (e) the pollutant(s)/precursor(s) of concern and the motor vehicle emissions budget(s), if applicable;
 - (f) information concerning changes to the inputs for the travel demand model and the approved emissions model ;
 - (g) a listing of any transportation control measures (TCMs) in SIPs, if applicable.
2. An alternate format may be used when the opportunity for more extensive agency and public comment is desired (e.g. the 4-year transportation plan update). When this format is used, the participating and affected agencies will be sent a copy of the proposed schedule (usually by e-mail), and their comment will be requested. If an agency requests a meeting/conference call at that time, it will be arranged as with the normal format. If not, the additional agency and public comment will be solicited, and the information required in steps C through F will be acquired. After that, the consultation meeting/conference call described for the normal format will occur.
 3. An alternate format may also be used when an amendment is not making significant changes (e.g. a small number of non-regionally significant changes to non-exempt projects). When this format is used, the participating and affected agencies will be sent a copy of the proposed schedule and the project list (usually by e-mail), and their comment will be requested. The proposed schedule shall include the other opportunities for consultation, as well as other significant activities. If an agency requests a meeting/ conference call at that time, it will be arranged as with the normal format. If not, the activities will proceed according to the proposed schedule.

Based on the initial consultation meeting/conference call/e-mail exchange, a decision will be made concerning whether the main components of a conformity analysis will be required. Those components are:

1. a new regional emissions analysis and
2. a review of the progress in implementing TCMs in the applicable SIP(s).

If a new regional emissions analysis is required, the procedures in step K will be followed. Alternately, if a new regional emissions analysis is not required, the consultation should confirm/determine whether the update/amendment only adds or deletes exempt projects or relies on a previous regional emissions analysis. If the update/amendment only adds

or deletes exempt project, KIPDA staff will notify the other participating and affected agencies as outlined in the procedures of step I. Further, if the procedures in step L identify TCMs in SIPs, the progress in implementing those TCMs will be reviewed.

- H. Distribution of Project List. Regardless of the format used in G, a finalized project list will be sent to the participating and affected agencies. If the initial consultation indicates no concerns with the initial project list, it can fulfill this requirement. If an amended list is required, it should be sent to participating and affected agencies within 30 days of the initial consultation meeting/conference call.
- I. Exempt projects and notification of TP/TIP updates/amendments that merely add or delete exempt projects. As provided in step G, KIPDA, in consultation with the participating agencies, will evaluate whether projects otherwise exempt from conformity per 40 CFR 93.126 through 93.128 should be treated as non-exempt in cases where potential adverse impacts may exist. KEEC shall be invited to participate in these discussions.

KIPDA shall notify the participating and affected agencies of TP/TIP updates or amendments that merely add or delete exempt projects as listed in 40 CFR 93.105(c)(1)(v) before approval action by the KIPDA Transportation Policy Committee is sought.

- J. Identification of transportation projects in carbon monoxide and particulate matter nonattainment areas. Should a carbon monoxide nonattainment area be designated, KIPDA, in consultation with the other participating agencies, shall transmit a list of transportation projects in the carbon monoxide nonattainment areas, as applicable. For carbon monoxide, conformity must be demonstrated using the EPA-specified emissions model. The completion of any carbon monoxide project-level analyses required under this section shall be the responsibility of the project sponsor.

For the Louisville particulate matter nonattainment/maintenance area, KIPDA, in consultation with the other participating agencies, shall transmit a list of transportation projects in the particulate matter nonattainment/maintenance area, as applicable. KEEC shall be invited to participate in the development of this list. For particulate matter, sufficient data must be provided to determine whether a particulate matter hot spot analysis is required pursuant to 40 CFR 93.116 and 93.123. The completion of any particulate matter project-level analyses required under this section shall be the responsibility of the project sponsor.

- K. Regional emissions analysis. If the consultation process indicates that the project additions, changes, and deletions warrant a new regional emissions analysis, it shall be performed by KIPDA. When a regional emissions analysis is required,
1. the analysis shall be based on the regionally-significant projects in the TP as updated or amended;
 2. KIPDA has responsibility for the forecasting of travel based on the forecast of growth and development developed by the local land use planning agencies and adopted by the KIPDA Transportation Policy Committee;
 3. IDEM and/or LMAPCD and/or the designated agency (see section II.F) shall run the required EPA emissions model to estimate emission rates; and
 4. KIPDA shall utilize the results of the travel forecast and the results of the emissions model to quantify the regional emissions.
 5. For any nonattainment/maintenance area which includes, at least, a portion of the Louisville transportation planning study area but also includes area outside of the Louisville transportation planning study area, KIPDA and the appropriate participating and/or affected agency/ies shall consult to determine which agency/ies shall be responsible for determining the pollutant and/or precursor emissions for the portion of the nonattainment/maintenance area which lies outside the Louisville transportation planning study area. In particular, INDOT shall be responsible for the determining the emissions of fine particulate matter (PM_{2.5}) and its precursors for the Madison Township of Jefferson County, IN as long as it is part of the local PM_{2.5} nonattainment/ maintenance area. With the knowledge of the other participating and affected agencies and the agreement of the agency to which the responsibility is being delegated, INDOT may delegate this responsibility to another designated agency. In that case, INDOT shall:
 1. coordinate with the designated agency to provide any input data necessary to develop the emission estimates,
 2. ensure that the procedures used in developing the estimates are appropriate and that the emission estimates are reasonable, and
 3. provide KIPDA with copies of all documentation of this coordination.

L. Implementation of TCMs. The participating agencies shall develop lists of TCMs in the applicable SIPs. As required in 40 CFR 93.113, the participating agencies shall track the progress of these TCMs, and KIPDA shall document in the TP or TIP any obstacles or significant delays in implementation. The participating agencies shall identify steps and actions to be taken by KIPDA, INDOT, KYTC, IDEM, LMAPCD, TARC, and/or the local governments to secure approval or funding for the delayed TCMs so they receive maximum priority for implementation. If further delay is encountered, the agencies shall consider whether a SIP revision is appropriate to remove or replace the TCMs with other emission reduction measures. KEEC shall be requested to participate in these efforts.

M. Distribution of draft documents before formal adoption or publication. KIPDA shall forward copies of its draft updated or amended TP and/or TIP and conformity analysis directly to the participating and affected agencies. The staffs of the participating and affected agencies shall be requested to review the results of the conformity analysis. The time period for the agency review will normally be a minimum of 2 weeks. If the initial consultation followed the procedure outlined in III.G.3, the time period for this consultation shall be as agreed to in the initial consultation. If time permits, this agency review may occur before the public comment period starts. If not, the agency review shall occur during the public comment period. In particular, IDEM and LMAPCD, as the agencies responsible for air quality planning in the Indiana and Jefferson County, KY portions of the Louisville, KY-IN nonattainment areas shall assess the consistency of the conformity analyses of the TP and/or TIP with the goals and objectives of their SIPs. As the agency responsible for air quality planning in the Kentucky portion of the Louisville, KY-IN nonattainment areas outside of Jefferson County, KEEC shall also be requested to assess the consistency of the conformity analyses of the TP and/or TIP with goals and objectives of the Kentucky SIP.

Informal discussion may be initiated between the technical staffs of KIPDA and the participating and affected agencies to determine if there are any differences in interpretations of the conformity analysis results. A meeting may be requested by any of the participating or affected agencies to facilitate the discussion of results. If requested, the meeting shall be called by KIPDA, and notice will be sent to the participating and affected agencies not less than seven calendar days before the meeting. KIPDA shall respond to significant written comments.

N. Formal process seeking the federal conformity determination. If appropriate, KIPDA shall initiate the formal process seeking the federal conformity determination for the TP and/or TIP update or amendment.

1. After addressing the comments from the public and the participating and affected agencies, KIPDA staff shall request action from the KIPDA Transportation Policy Committee adopting per 23 CFR 450.314(c) the updated or amended TP and/or TIP, including the conformity analysis, if appropriate. This adoption shall be the basis for formal transmittal to the states and federal agencies.
2. KIPDA shall transmit copies of the updated or amended TP and/or TIP including the conformity analysis, if appropriate, and the KIPDA Transportation Policy Committee adoption action to INDOT, KYTC, IDEM, LMAPCD, KEEC, TARC, FHWA-IN, FHWA-KY, FTA-Region 4, FTA-Region 5, EPA-Region 4, and EPA-Region 5.
3. The receipt of the updated or amended TP and/or TIP including the conformity analysis by FHWA-IN and FHWA-KY will initiate a 60 day comment and response period.
4. FHWA-IN and FHWA-KY shall formally request comments from their respective EPA Region offices. This coordinated request will initiate a 30 day review and comment period for the participating and affected agencies.
5. Each participating agency shall forward comments to its respective FHWA Division Office with a copy to KIPDA. KEEC shall also be requested to forward comments to the FHWA-KY Division office with a copy to KIPDA. In particular, IDEM and LMAPCD, as the agencies responsible for air quality planning in the Indiana and Jefferson County, KY portions of the Louisville, KY-IN nonattainment areas shall assess the consistency of the conformity analyses of the TP and/or TIP with the goals and objectives of their SIPs. These agencies shall provide written comments on final conformity determinations for transportation plans and programs and for amendments related to exempt projects. As the agency responsible for air quality planning in the Kentucky portion of the Louisville, KY-IN nonattainment areas outside of Jefferson County, KEEC shall be requested to provide a similar assessment relative to the Kentucky SIP and written comments on the final conformity determinations. FHWA-IN shall forward all appropriate comments to FHWA-KY.
6. The governors of Indiana and Kentucky or their designees shall comment on the fiscal responsibility of the TP and/or shall determine KIPDA's TIP to be financially constrained during the conformity consultation.

7. FHWA-KY and FTA-Region 4 shall jointly issue a federal conformity determination to INDOT and KYTC and copy all participating and affected agencies.
8. INDOT and KYTC shall approve KIPDA's TIP for inclusion into the Indiana and Kentucky STIPs.
9. If IDEM, LMAPCD, or KEEC does not agree with the federal conformity determination, it may request review and resolution from the respective Governor's office in accordance with 40 CFR 93.105(d) and section IX of this document.

IV. The Contents of the MPO Conformity Documentation

KIPDA's conformity documentation may be included with the documentation of an updated or amended TP and/or TIP or may be provided separately or using both approaches. In either case, it should include a written summary of the conformity analysis performed, if appropriate, and provide the following information:

- A. For a conformity determination involving an update or amendment of the TP when a new regional emissions analysis is required, the documentation should include the following items, if applicable.
 1. The updated TP or information concerning amended projects;
 2. A discussion of the regional emissions analysis which should include the following:
 - a. Identification of exempt projects (by list or reference);
 - b. Identification of projects subjected to the analysis under each analysis scenario, if applicable;
 - c. Description of the travel demand modeling:
 - (1) Travel demand model used;
 - (2) Methods and assumptions used;
 - (3) Geographic and functional classification coverage; and
 - (4) Summary of vehicle-miles-traveled for each analysis scenario;
 - d. Description of the emissions modeling;

- (1) Emissions model used;
 - (2) Methodology and assumptions; and
 - (3) Sample input/output printouts;
 - e. Description of post process analysis including off-network VMT;
 - f. Tabulation of analysis results, including the calculated emissions of the appropriate pollutants and precursors, as applicable per 40 CFR 93.118(a) and 93.119(b) and (e) showing that the required conformity tests were met; and
 - g. A discussion of other relevant observations or issues;
3. An outline of the progress in implementing TCMs in the applicable SIP(s) and an explanation of any delays incurred in implementing the TCMs;
 4. Documentation of public comments and responses; and
 5. Action(s) by KIPDA's Transportation Policy Committee adopting the TP and that a determination of conformity with the SIP is supported.
- B. For a conformity determination involving an update of the TP or for an update of the TIP and the associated TP amendment, when a new regional emissions analysis is not required, the documentation should include the following items, if applicable.
1. The updated TP or the updated TIP and information concerning the amended TP projects;
 2. A demonstration that:
 - a. the TIP contains all projects which must be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan;
 - b. all TIP projects which are regionally significant are included in the TP with design concept and scope adequate to determine their contribution to the TP's regional emissions at the time of the TP's conformity determination; and
 - c. the design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the plan;

3. An outline of the progress in implementing TCMs in the applicable SIP(s) and an explanation of any delays incurred in implementing the TCMs;
 4. Documentation of public comments and responses, if applicable; and
 5. Action(s) by KIPDA's Transportation Policy Committee adopting the TP and/or TIP or amendment(s) and, if applicable, that a determination of conformity with the SIP is supported.
- C. For a conformity determination involving a TP or TIP amendment when a new regional emissions analysis is not required and which is not the update of the TIP and the associated TP amendment, the documentation should include the following items, if applicable.
1. Information concerning amended projects;
 2. Documentation of public comments and responses, if applicable; and
 3. Action(s) by KIPDA's Transportation Policy Committee adopting the TIP or amendment(s) and, if applicable, that a determination of conformity with the SIP is supported.

V. Coordination Related to the Development of State Implementation Plans

- A. Establishment of mobile source emissions inventories and budgets. IDEM and/or LMAPCD, in consultation with the other participating and affected agencies in their respective jurisdictions, shall be responsible for establishing mobile source emissions inventories and budgets for the appropriate pollutants and precursors in the Indiana and Jefferson County, KY portions of the Louisville, KY-IN nonattainment areas, as applicable. IDEM and/or LMAPCD shall consult with the participating and affected agencies to achieve concurrence regarding the data and assumptions to be utilized when establishing mobile source emissions inventories and budgets.

KEEC has responsibility for establishing the mobile source emissions inventories and budgets for the appropriate pollutants and precursors for the Kentucky portion of the Louisville, KY-IN nonattainment areas excluding Jefferson County, KY. Any of the participating agencies may request consultation with KEEC in the establishment of these inventories and budgets.

In the event EPA requires a new emissions model, IDEM and/or LMAPCD shall consult with the participating agencies in their respective jurisdictions to determine what revisions, if any, should be made to the mobile source emissions inventories and budgets and what roles each agency shall undertake in developing the revisions.

In the event EPA requires a new emissions model, KEEC may be requested to consult with the participating agencies in its jurisdiction to determine what revisions, if any, should be made to the mobile source emissions inventories and budgets and what role each agency shall undertake in developing the revisions.

- B. Establishment of new nonattainment areas. Should a new nonattainment area be identified in Indiana or Jefferson County, KY for criteria pollutant(s), IDEM and/or LMAPCD shall consult with the participating and affected agencies to determine the contribution of mobile sources to the nonattainment of the other criteria pollutant(s) (e.g. carbon monoxide, particulate matter), identify whether transportation is a significant contributor to the nonattainment status, and/or develop transportation strategies to reduce emissions.

Should a new nonattainment area be identified in Kentucky excluding Jefferson County for criteria pollutant(s), KEEC has responsibility for determining the contribution of mobile sources to the nonattainment of the other criteria pollutant(s) (e.g. carbon monoxide, particulate matter), identify whether transportation is a significant contributor, and/or develop transportation strategies to reduce emissions. Any of the participating agencies may request consultation with KEEC in these efforts.

- C. Development of TCMs to be included in SIP and TCM Substitution. Pursuant to Section 108(f) of the CAAA, IDEM and LMAPCD, in consultation and cooperation with the other participating and affected agencies, shall jointly develop and select reasonably available transportation control measures (TCMs) to reduce emissions from mobile sources in the Indiana and Jefferson County, KY portions of the Louisville, KY-IN nonattainment areas and commit to them in an applicable SIP. IDEM and/or LMAPCD shall be responsible for involving the participating and affected agencies and the public in the selection or development of TCMs. In the event that IDEM and/or LMAPCD should choose to substitute one TCM for another, they shall consult with the participating and affected agencies during the development and adoption of the replacement TCM.

KEEC has responsibility to develop and select reasonably available transportation control measures (TCMs) to reduce emissions from mobile sources in the Kentucky portion of the Louisville, KY-IN nonattainment

areas excluding Jefferson County and to commit to them in an applicable SIP. Any of the participating agencies may request to consult with KEEC in these efforts. In the event that KEEC should choose to substitute one TCM for another, any of the participating agencies may request to consult with KEEC during the development and adoption of the replacement TCM.

- D. SIP submittal. IDEM is responsible for the preparation of recommendations for nonattainment to EPA for the Indiana portion of the Louisville, KY-IN nonattainment areas. IDEM is also responsible for the preparation of State Implementation Plans (SIPs) and, in coordination with the participating agencies, is responsible for the preparation of emissions inventories for SIP submittals to EPA for the Indiana portion of the Louisville, KY-IN nonattainment area. Draft versions of the SIP or SIP revisions which involve mobile source emissions for the Indiana portion of the Louisville, KY-IN nonattainment areas shall be distributed by IDEM to the participating and affected agencies for comment before submitting to EPA.

LMAPCD is responsible for providing information to KEEC for the preparation of recommendations of nonattainment designations for Jefferson County, KY. LMAPCD is also responsible for the preparation of emissions inventories for Jefferson County, KY. If the Kentucky portion of the nonattainment area includes only Jefferson County, LMAPCD is responsible for the preparation of SIPs and for forwarding them to KEEC for submittal to EPA. If the Kentucky portion of the nonattainment area includes parts of Kentucky outside Jefferson County, LMAPCD is responsible for providing Jefferson County information to KEEC. Draft versions of the SIP or SIP revisions which involve mobile source emissions for the Jefferson County, KY portion of the Louisville, KY-IN nonattainment areas shall be distributed by LMAPCD to the participating agencies for comment before submitting to KEEC.

IDEM and LMAPCD (or LMAPCD jointly with KEEC if the area includes Kentucky counties outside of Jefferson County) will schedule public hearings on the proposed revisions to the respective SIPs. Written and oral comments received by IDEM and/or LMAPCD (or LMAPCD jointly with KEEC if the area includes Kentucky counties outside of Jefferson County) and their responses shall be summarized and submitted as part of the respective SIPs.

KEEC is responsible for the preparation of recommendations concerning the Kentucky nonattainment designations, emissions inventories excluding Jefferson County, and SIPs for submittal to EPA for the Kentucky portion of the Louisville, KY-IN nonattainment areas. Any of the participating agencies may request consultation with KEEC in these efforts.

VI. Process for Providing Final Documents to Each Agency

- A. Distribution of final documents of TP and/or TIP with federal conformity determination. After receiving notification of approval of the TP and/or TIP update including the federal conformity determination. KIPDA will develop additional documentation for the distribution of final documents. If, during the process of determining conformity, significant changes are required for the draft documents (TP and/or TIP), KIPDA will make the changes and provide copies of the final approved document(s) (the TP and/or TIP) including any comments received during the formal process of seeking the federal conformity determination (see section III.N.5) directly to INDOT, KYTC, IDEM, LMAPCD, KEEC, TARC, FHWA-IN, FHWA-KY, FTA-Region 4, FTA-Region 5, EPA-Region 4, EPA-Region 5. As an alternative to sending copies to the agencies listed above, KIPDA may post the final approved documents on its website and inform the other agencies of their presence at that location.

If, during the process of determining conformity, significant changes are not required for the draft documents (TP and/or TIP), KIPDA will provide copies of the notification of approval and any comments received during the formal process of seeking the federal conformity determination (see section III.N.5) directly to INDOT, KYTC, IDEM, LMAPCD, KEEC, TARC, FHWA-IN, FHWA-KY, FTA-Region 4, FTA-Region 5, EPA-Region 4, EPA-Region 5. The additional documentation added to the draft documents shall constitute the final approved documents for the TP and/or TIP. As an alternative to sending copies to the agencies listed above, KIPDA may post the final approved documents on its website and inform the other agencies of their presence at that location.

- B. Distribution of final documents of STIPs. INDOT and KYTC shall forward copies of the final STIP documents to the participating agencies.
- C. Distribution of final documents of SIPs. IDEM and LMAPCD shall forward copies of the final mobile source portions of the SIP documents to the participating agencies. KEEC may be requested to forward copies of the final mobile source portions of their SIP document to the participating agencies.

VII. Consultation on Conformity Determination and Redetermination for Transportation Plans, TIPs, and Projects.

The participating agencies shall consult to evaluate activities that may require a conformity determination. KEEC shall be invited to participate in this consultation. A meeting may be requested by any of the participating or affected

agencies to discuss this subject. If requested, the meeting shall be called by KIPDA, and notice will be sent to the participating and affected agencies not less than seven calendar days before the meeting.

VIII. Consultation on Emissions Analysis for Transportation Activities Which Cross Borders of KIPDA's Transportation Planning Study Area and/or the Louisville Nonattainment Areas.

The participating agencies shall consult on emissions analysis/es for transportation activities which cross the borders of the KIPDA transportation planning study area and/or the Louisville nonattainment areas. KEEC shall be invited to participate in this consultation. A meeting may be requested by any of the participating or affected agencies to discuss a subject of this type. If requested, the meeting shall be called by KIPDA, and notice will be sent to the participating and affected agencies not less than seven calendar days before the meeting.

IX. Resolving Conflicts

Pursuant to 40 CFR 93.105(d), conflicts between the state/local air quality agencies (IDEM, LMAPCD), KIPDA, and/or either/both of the state departments of transportation (DOTs) (INDOT, KYTC) regarding conformity determinations that cannot be resolved shall be submitted to the Governor of the appropriate state for resolution. Should the air quality agency/ies maintain specific concerns regarding KIPDA's TP and/or TIP conformity determination/analysis, the air quality agency/ies will notify KIPDA and the appropriate state DOT(s) of its concerns in writing. KIPDA and/or the appropriate DOT(s) shall be responsible for responding to the air quality agency's/ies' concerns in writing. Once the air quality agency/ies receive(s) a/ letter(s) of response from KIPDA and/or the appropriate DOT(s), and should the air quality agency/ies determine that the letter(s) of response does/do not adequately resolve the air quality agency's/ies' concerns, the air quality agency/ies will have fourteen days from the date stamped as "received" on the letter(s) of response to appeal to the appropriate Governor. If the air quality agency/ies does/do not appeal, KIPDA may proceed with the final conformity determination. If the air quality agency/ies appeals, then the conformity determination must have the concurrence of the appropriate Governor before it is accepted as final.

Since conflict resolution is accomplished pursuant to 40 CFR 93.105(d), it is expected that conflicts involving KEEC, KIPDA, and KYTC regarding conformity determinations that cannot be resolved will be submitted to the Governor of Kentucky for resolution. It is expected that the process for resolution will be identical to that listed above.

X. Public Involvement

For matters related to the conformity of transportation plans, transportation improvement programs, and transportation projects, the adopted KIPDA, INDOT, KYTC, and TARC public involvement procedures detail the methods used to solicit public comments. The public involvement plans for these agencies are available from the respective agency upon request. The public involvement process shall be consistent with the above referenced public involvement procedures of the agency responsible for the meeting. Any modification to the public involvement procedures requires a minimum public comment period of 45 days before the public involvement process is formally modified. There shall be a periodic review of the effectiveness of the public involvement process to ensure that it provides full and open access, and as appropriate, revisions of the process.

For matters related to State Implementation Plans, the public involvement requirements applicable to IDEM, KEEC, and LMAPCD are established in Clean Air Act, Section 110(l) and 40 CFR 51, Appendix V. The public involvement process shall be consistent with the above referenced public involvement requirements of the agency responsible for the meeting.

All public comments asserting that there are regionally significant projects not receiving FHWA/FTA funding or approval which have not been properly reflected in the emissions analysis supporting a proposed conformity determination for a TP or TIP and their amendments shall be addressed in writing by KIPDA and/or the implementing agency. These requirements shall work in conjunction with public involvement practices established under 23 CFR part 450 and 40 CFR 93.105(e).

XI. Revisiting Consultation Procedures and Revising MOU

The consultation procedures outlined in this MOU will be revisited and possibly revised periodically as deemed appropriate by the participating agencies. The events most likely to trigger revisions of this MOU would be new or amended federal and state legislation and/or regulations that affect transportation conformity.

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

Parties: KIPDA, INDOT, KYTC, IDEM, LMAPCD, TARC, FHWA, FTA, and EPA

LIST of SIGNATORIES

Note: Signatures appear on separate, multiple pages.

Executive Director
Kentuckiana Regional Planning and Development Agency

Deputy Commissioner
Planning Operations, Indiana Department of Transportation

Secretary
Kentucky Transportation Cabinet

Commissioner
Indiana Department of Environmental Management

Executive Director
Louisville Metro Air Pollution Control District

Executive Director
Transit Authority of River City

Division Administrator
Federal Highway Administration, Indiana Division

Division Administrator
Federal Highway Administration, Kentucky Division

Regional Administrator
Federal Transit Administration, Region 4

Regional Administrator
Federal Transit Administration, Region 5

Regional Administrator
Environmental Protection Agency, Region 4

Regional Administrator
Environmental Protection Agency, Region 5

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

Parties: KIPDA, INDOT, KYTC, IDEM, LMAPCD, TARC, FHWA, FTA, and EPA

Note: Signatures appear on separate, multiple pages.

Executive Director
Kentuckiana Regional Planning and Development Agency

Date

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

Parties: KIPDA, INDOT, KYTC, IDEM, LMAPCD, TARC, FHWA, FTA, and EPA

Note: Signatures appear on separate, multiple pages.

Deputy Commissioner
Planning Operations, Indiana Department of Transportation

Date

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

Parties: KIPDA, INDOT, KYTC, IDEM, LMAPCD, TARC, FHWA, FTA, and EPA

Note: Signatures appear on separate, multiple pages.

Secretary
Kentucky Transportation Cabinet

Date

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

Parties: KIPDA, INDOT, KYTC, IDEM, LMAPCD, TARC, FHWA, FTA, and EPA

Note: Signatures appear on separate, multiple pages.

Commissioner
Indiana Department of Environmental Management

Date

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

Parties: KIPDA, INDOT, KYTC, IDEM, LMAPCD, TARC, FHWA, FTA, and EPA

Note: Signatures appear on separate, multiple pages.

Executive Director
Louisville Metro Air Pollution Control District

Date

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

Parties: KIPDA, INDOT, KYTC, IDEM, LMAPCD, TARC, FHWA, FTA, and EPA

Note: Signatures appear on separate, multiple pages.

Executive Director
Transit Authority of River City

Date

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

Parties: KIPDA, INDOT, KYTC, IDEM, LMAPCD, TARC, FHWA, FTA, and EPA

Note: Signatures appear on separate, multiple pages.

Division Administrator
Federal Highway Administration, Indiana Division

Date

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

Parties: KIPDA, INDOT, KYTC, IDEM, LMAPCD, TARC, FHWA, FTA, and EPA

Note: Signatures appear on separate, multiple pages.

Division Administrator
Federal Highway Administration, Kentucky Division

Date

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

Parties: KIPDA, INDOT, KYTC, IDEM, LMAPCD, TARC, FHWA, FTA, and EPA

Note: Signatures appear on separate, multiple pages.

Regional Administrator
Federal Transit Administration, Region 4

Date

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

Parties: KIPDA, INDOT, KYTC, IDEM, LMAPCD, TARC, FHWA, FTA, and EPA

Note: Signatures appear on separate, multiple pages.

Regional Administrator
Federal Transit Administration, Region 5

Date

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

Parties: KIPDA, INDOT, KYTC, IDEM, LMAPCD, TARC, FHWA, FTA, and EPA

Note: Signatures appear on separate, multiple pages.

Regional Administrator
Environmental Protection Agency, Region 4

Date

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

Parties: KIPDA, INDOT, KYTC, IDEM, LMAPCD, TARC, FHWA, FTA, and EPA

Note: Signatures appear on separate, multiple pages.

Regional Administrator
Environmental Protection Agency, Region 5

Date