UTAH STATE IMPLEMENTATION PLAN

SECTION XII

TRANSPORTATION CONFORMITY CONSULTATION

Adopted by the Utah Air Quality Board
May 2, 2007

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SECTION XII

TRANSPORTATION CONFORMITY CONSULTATION

A. INTRODUCTION

(1) History

The air quality and transportation planning agencies in Utah have had a cooperative working relationship for decades. Following the adoption of the Clean Air Act (CAA) in 1970, the Utah State Bureau of Air Quality, and the Metropolitan Planning Organizations (MPOs), Mountainland Association of Governments (MAG) and Wasatch Front Regional Council (WFRC), established separate agreements in 1978. These agreements were in response to Environmental Protection Agency's (EPA) non-attainment designations in Utah during the 1970's and were updated following the 1990 Clean Air Act Amendments and numerous subsequent amendments to the federal transportation conformity rule since 1993. Currently, the Utah Division of Air Quality (UDAQ) has revised Memorandums of Agreement with MAG (2000) and WFRC (2005). Throughout the years these agencies have continued to work together to achieve sound transportation and air quality objectives.

(2) Rules & Regulations

The rules and regulations for a Transportation Conformity State Implementation Plan (SIP) are established in Title 40 Protection of Environment Code of Federal Regulation (CFR) Part 93 ***Determining Conformity of Federal Actions to State or Federal Implementation Plans*** (referred to hereafter as the "Conformity Rule") Section 105 ***Consultation***. The Conformity Rule outlines the criteria for consultation procedures related to transportation conformity. The ***2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users*** (SAFETEA-LU) under Section 6011(f)(4) allows for a streamlined document to address consultation procedures. As new federal regulations affecting transportation planning and air quality are created in the future, the Transportation Conformity SIP will be updated as necessary.

(3) Transportation Conformity

The Transportation Conformity SIP applies to all EPA designated non-attainment and maintenance areas for transportation related criteria pollutants within the state of Utah.

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The Transportation Conformity SIP applies to any area in Utah that is designated or may be designated in the future as a non-attainment or maintenance area.

B. TRANSPORTATION CONFORMITY CONSULTATION

(1) Affected Agencies

For the purposes of consulting on transportation conformity issues, the following participating agencies will comprise the Interagency Consultation Team (ICT):

- Utah Division of Air Quality (UDAQ)
- Utah Metropolitan Planning Organizations (MPOs) located in EPA designated non-attainment and maintenance areas
- Utah Department of Transportation (UDOT)
- Utah Local Public Transit Agencies
- Federal Highway Administration (FHWA)
- Federal Transit Administration (FTA)
- U.S. Environmental Protection Agency (EPA)

The ICT is a workgroup that makes technical and policy recommendations regarding transportation conformity issues. The workgroup will be comprised of management and technical staff members from the affected agencies associated directly with transportation conformity. Each agency will appoint a designated contact for the ICT. The appropriate agency and its policy body will determine policy level decisions, such as adopting the Regional Transportation Plan (RTP), Transportation Improvement Program (TIP), and SIP.

The ICT is a forum to continue the dialogue and sharing of information between air quality and transportation planning agencies regarding transportation conformity. Participating agencies provide coordination, advice, consultation, and cooperation regarding air quality and transportation planning. The forum uses a variety of communication methods for consultation: meetings, written and electronic correspondence, workshops, site visits, telephone discussions, and websites. The form of consultation that the ICT undertakes largely depends on the proposal, the complexity, and the relationship with the parties to be consulted.

(2) Authorities & Limitations

The affected agencies operate according to specific responsibilities, authorities, and limitations under various federal and state laws. In addition, because of an established

working relationship, the agencies listed above recognize and respect the responsibilities, authorities and limitations of the other participating agencies. Each agency bears a responsibility to provide data and documentation in a timely manner for use by other agencies. Each agency is responsible for following the relevant state and federal requirements for public participation, public notice and comment, and formal adoption procedures. The respective agencies acknowledge a responsibility to notify each other of upcoming actions that will affect the domain of any other affected agencies.

(3) ICT Process Initiation: Transportation Conformity Actionable Events and Lead Agency Roles

The ICT consultation process is to be initiated and directed by the corresponding lead agency for the following transportation conformity tasks and events. The designation of a lead agency is determined by legal obligations and professional expertise. Any ICT member agency may initiate the consultation process to address pertinent air quality or transportation planning issues related to transportation conformity events.

- Development/review of on road mobile source emissions models and methods - lead agency: MPO, or UDAQ, or EPA;

- Development/review of travel demand models or any other analytical methods used to predict vehicle miles traveled - lead agency: MPO or UDOT;

- Development/review of regionally significant projects and changes - lead agency: MPO or UDOT;

- Development/review of drafts for a new or amended RTP, TIP, or conformity analysis - lead agency: MPO;

- Development/review of air quality modeling and or any other analytical methods used for SIP development - lead agency: UDAQ;

- Develop a list of the Transportation Control Measures (TCMs) to be considered in the development/review of draft or revisions to the SIP, if necessary - lead agency: MPO;

- The MPO will draft a list of TCMs which are in the applicable implementation plan and present this list to the ICT for review and concurrence - lead agency: MPO;

- Development/review of draft or revisions to the SIP - lead agency: UDAQ;

- Notification of pending transportation conformity lapse - lead agency: FHWA;

- Notification of SIP findings that may lead to nonconformity and/or sanctions - lead agency: EPA;

- Revisions to a TCM prepared by the MPO for UDAQ to include in the SIP - lead agency: MPO;

(4) Regular ICT Agency Roles & Responsibilities:

(a)The lead ICT agency is responsible for the following:

- Initiate the ICT consultation process according to transportation conformity actionable events established above;

- Consult with the appropriate representatives of the ICT agency;

- Formulate and distribute ICT draft and final meeting agendas to representatives of the ICT agency in a timely manner;

- Notify and Provide ICT agencies draft and final documents and appropriate supporting materials prior to formal adoption or publication;

- Solicit input from the ICT agencies through participation in the development of draft documents and supporting materials;

- Review significant comments from ICT agencies and provide responses in a timely manner prior to formal adoption of the final document;

- Provide written responses to all comments from ICT member agencies;

(b) The non-lead ICT agencies are responsible for the following:

- Participate in the ICT consultation process according to transportation conformity actionable events established above;

- Consult with the lead ICT agency and other ICT agencies;

- Provide input and technical assistance when requested;

- Review and provide comments on draft and final documents and appropriate supporting information prior to formal adoption

- Request written responses to comments provided to the lead ICT agency.

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C. SPECIFIC ROLES & RESPONSIBILITIES

(1) Utah Division of Air Quality

UDAQ is the agency responsible for air quality planning, and is responsible for developing air quality plans known collectively as the State Implementation Plan (SIP). The SIP is an air quality plan that includes the control measures needed to demonstrate either attainment or maintenance of the federal National Ambient Air Quality Standards (NAAQS). UDAQ is responsible for air quality modeling or any applicable analytical methods for SIP development. UDAQ consults with affected parties and agencies throughout the SIP development process conducting briefings and workshops to gather ideas, review technical findings, and prepare draft revisions. Prior to formal adoption or publication, UDAQ provides the affected agencies draft documents and support materials. UDAQ provides final documents and supporting information to each affected agency after approval or adoption.

UDAQ provides coordination, advice, consultation, and cooperation to EPA, FHWA, FTA, UDOT, Local Public Transit Agency, and any MPO during the development of any SIP involving mobile source emissions budgets and TCMs. UDAQ is responsible for providing technical and policy guidance to the MPOs and UDOT regarding procedures to estimate on-road vehicle emissions. In addition, UDAQ is the lead agency for maintaining the air quality-monitoring network and providing regional ambient air data in Utah. UDAQ also assists the EPA in making air quality monitoring data available to the public.

(2) Metropolitan Planning Organization

MPOs are the agencies responsible for transportation planning in established urban areas and are the conduit for various federal funds for planning and project implementation. Each MPO is responsible for developing two main products through the transportation planning process. The first is a Regional Transportation Plan (RTP) that includes improvements to highways, transit, and other transportation modes to meet the transportation needs of the area over a minimum 20-year period. The second is a Transportation Improvement Program (TIP) a capital improvement program for highway, transit, and other transportation mode projects.

Both the RTP and the TIP must conform to the goals and objectives of the CAA, identified by DAQ in the SIP. The MPO is responsible for travel demand model development (or any other analytical methods used to predict vehicle miles traveled), estimating mobile source emissions, and development of TCMs. The MPO will develop and evaluate mobile source emissions projections and ensuing mobile source emissions budgets to be included in the SIP. The MPO will develop TCMs if needed to demonstrate either attainment or maintenance of the federal NAAQS. The MPO is

responsible for analyzing the mobile source emissions effects of the RTP and TIP. The MPO will make conformity determinations for RTPs and TIPs as required by the federal CAA and state law.

The MPO provides coordination, advice, consultation, and cooperation to UDAQ, UDOT, EPA, FHWA and Local Public Transit Agency during the course of the development of transportation plans, TIPs, and conformity determinations. Prior to formal adoption or publication, the MPO provides the affected agencies draft documents and support materials. The MPO provides final documents and supporting information to each affected agency after approval or adoption. Each MPO actively coordinates with the other agencies during the transportation planning process. Meetings are scheduled on a regular basis through technical and regional planning committee meetings. In addition, meetings are accommodated when necessary and when other ICT agencies request them.

(3) Utah Department of Transportation

UDOT is responsible for serving on MPO councils and committees, reviewing the planning processes, conducting conformity determination concurrence reviews on RTPs and TIPs, and balancing local needs and preferences with the state-administered transportation system's needs. In non-attainment and maintenance areas where there is no designated MPO, UDOT is the lead transportation agency and assumes the MPO transportation planning responsibilities mentioned in this document.

(4) Utah Local Public Transit Agencies

The local public transit agency is responsible for supporting and conducting transportation planning activities for public transportation service, and for providing transit operations to accommodate local and regional connectivity goals.

(5) Federal Highway Administration and Federal Transit Administration

The FHWA and FTA are responsible for participating on MPO committees and task forces; reviewing the MPO transportation planning processes (which includes an annual review); providing transportation planning assistance and guidance for RTPs and TIPs; approving air quality conformity determinations; and providing notification of a pending conformity lapse.

(6) U.S. Environmental Protection Agency

EPA is responsible for: approving updated mobile source vehicle emission models; issuing guidance on conformity criteria and procedures; providing modeling and emission inventory development assistance to UDAQ, UDOT, and the MPOs; approving mobile source emission budgets and SIP revisions (including TCMs); and reviewing and

commenting on regional emissions analyses and conformity determinations for RTPs and TIPs. Where possible EPA will participate in development of and review and comment on drafts of air quality conformity analyses.

D. INTERAGENCY COLLABORATION

(1) Open Dialogue

UDAQ, UDOT, the Utah local public Transit agencies and the MPO's will engage in an open dialogue through collaborative participation in the planning processes of other affected agencies. Interagency participation will strengthen the relationships between agencies by establishing each as a planning partner with an investment in the entire planning perspective.

(2) SIP Development Process

UDAQ will include the relevant MPOs and UDOT in its SIP development process from the beginning by establishing a specific workgroup for addressing any concerns of the transportation community. The purpose of this work group will be to provide a forum to build consensus; in order to achieve this goal, the work group will meet on a regular basis. Transportation agencies will also participate in the general meetings and consultations that UDAQ undertakes for all stakeholders and interested parties during SIP development.

(3) Transportation Planning Process

UDOT and the MPOs will involve UDAQ in their respective transportation planning process that produces RTPs and TIPs. The MPOs and UDOT will design transportation plans that conform to the goals and objectives of the CAA and the motor vehicle emission budgets (MVEB) specified in the SIP. UDAQ will provide an air quality perspective to the transportation planning process by participating in MPO and UDOT technical and policy meetings. This access provides UDAQ with knowledge of the specific transportation projects that are being developed from concept through construction. In developing a SIP that addresses transportation related emissions controlled by the CAA, the MPO and UDOT will assess and develop the long range mobile source budgetary needs of the urban and/or rural non-attainment area that maintain and promote the CAA goals and support the economic, demographic, and healthy quality of life in the area with consultation and cooperation of UDAQ. UDAQ will also provide consultation regarding the development of mobile source emissions budgets, but does not make transportation planning decisions. Through this cooperative planning process, UDAQ will establish the MVEBs specified in the SIP.

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E. INTERAGENCY CONSULTATION PROCESS

(1) Specific Processes

The interagency consultation processes involving UDAQ, UDOT, EPA, FHWA/FTA, MPOs and Local Public Transit Agencies requires that these agencies coordinate, advise, consult, and cooperate to address the following issues: (see 40 CFR 93.105(c) for the paragraphs referenced below)

(a) Emissions Models and Methods

The MPO (or UDOT, for non-attainment areas not included in an MPO) is the lead agency for developing transportation and vehicle activity assumptions to be used in transportation plans and regional air quality conformity analysis. The MPO will develop travel characteristics with input from local jurisdictions, local public transit agency, and UDOT. The MPO (or UDOT, for non-attainment areas not included in an MPO) is responsible for mobile source emission estimates for conformity determinations using the latest motor vehicle emissions model designated or approved by EPA.

UDAQ is the lead agency for documenting meteorological conditions, fuel specifications, and I/M program settings to be used in hot spot and regional air quality conformity analysis. UDAQ will document meteorological conditions in consultation with EPA during the SIP development process. The model and guidance documents of methodologies to be used for hot spot analyses is selected by EPA in collaboration with FHWA/FTA.

(b) Regionally Significant Projects and Changes

The MPO is the lead agency to identify regionally significant projects and significant changes to project design concept or scope. Through the consultation process, the ICT will make a determination of which minor arterials and other transportation projects should be considered "regionally significant" projects, and which projects may have undergone a significant change in design concept or scope since the previous TIP or RTP was approved.

As traffic conditions change in the future, the MPO's in consultation with DAQ, UDOT, FHWA, and EPA (and Local Public Transit Agency and FTA in cases involving transit facilities) will consider 1) the relative importance of minor arterials serving major activity centers, and 2) the absence of principal arterials in the vicinity to determine if any minor arterials should be considered as regionally significant for purposes of regional emissions analysis.

Changes to regionally significant projects may or may not necessitate a new regional emissions analysis. Representatives from UDAQ, MPO's, UDOT, Local Public Transit

Agency, FHWA, FTA, and EPA will meet to develop guidelines that identify significant changes in project design and scope for regionally significant projects. Project changes not addressed by the guidelines to be developed will be decided on a case by case basis through consultation by these agencies.

(c) Exempt Project Emissions

The MPO (or UDOT, for non-attainment areas not included in an MPO) is the lead agency for evaluating whether projects otherwise exempted from meeting the requirements of Title 40 Protection of Environment CFR §93.126 and §93.127 should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason.

(d) Transportation Control Measures Delays and Substitutes

The MPO (or UDOT, for non-attainment areas not included in an MPO) is the lead agency for tracking the implementation of TCMs and making a determination whether past obstacles to implementation of TCMs that are behind the schedule established in the applicable SIP 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. The MPO will consider whether delays in TCM implementation necessitate revisions to the applicable SIP to remove a TCM or substitute a TCM or other transportation-related emission reduction measure.

(e) Exempt Project Revisions

The MPO (or UDOT, for non-attainment areas not included in an MPO) is the lead agency for notification to affected agencies of any transportation plan or TIP revisions or amendments that merely add or delete exempt projects listed in Title 40 Protection of Environment CFR §93.126 or §93.127.

(f) Rural Non-attainment Areas

UDOT is the lead agency for selecting conformity tests and methodologies required in isolated rural non-attainment and maintenance areas.

(2) Consultation: Triggers and Jurisdictions

The interagency consultation processes involving the UDAQ, UDOT, MPOs and Local Public Transit Agencies requires that these agencies coordinate, advise, consult, and cooperate to address the following issues:

(a) Conformity Triggers

The MPO (or UDOT, for non-attainment areas not included in an MPO) is the lead agency responsible for determination of events that will trigger conformity determinations in addition to those identified in §93.104 ***Frequency of conformity Determinations***.

(b) Multiple Jurisdictions

UDOT is the lead agency responsible for consultation on procedures for emissions analysis for transportation activities that cross the borders of MPOs or non-attainment areas or air basins.

(3) "Donut" Areas

The MPOs and UDOT will consult in situations where the metropolitan planning area does not include the entire non-attainment or maintenance area to establish cooperative planning and analysis concerning conformity determinations of all projects in the non-attainment or maintenance area but outside the MPO planning area.

(4) Locally Funded Regionally Significant Projects

The MPOs and UDOT will meet with local transportation planners on a monthly basis to identify all transportation projects to be included in the TIP, regardless whether the projects are federally or locally funded. The "TIP Change Process" established by UDOT and the MPOs in consultation with other ICT members will ensure that plans for construction of regionally significant projects that are not FHWA/FTA projects are disclosed to the MPOs, and ensure that any changes to those plans are immediately disclosed prior to the beginning of a conformity analysis to ensure that these projects and changes are included in the emissions analysis.

(5) Project Details

The MPOs and UDOT will consult as needed to determine in sufficient detail the design and scope of proposed projects identified in the preceding paragraph to allow for a proper regional emissions analysis in the event that the project sponsors have not yet identified these features.

(6) Travel Model Development

The MPOs will consult as needed on the design, schedule, funding of research and data collection efforts for regional transportation model development.

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(7) Document Distribution

The lead agencies will distribute final documents and supporting materials to all agencies identified in section **B Transportation Conformity Consultation** after approval or adoption.

F. DISPUTE RESOLUTION PROCESS

As specified in Title 40 Protection of Environment CFR 93.105 ***Consultation*** (d) ***Resolving Conflicts***, conformity related conflicts among UDAQ, UDOT, MPO, and Local Transit Agency are escalated to the Governor, or designee, if they cannot be resolved by the heads of the involved agencies. The UDAQ has 14 days to appeal to the Governor after the UDAQ has received written notice of approval of the conformity analysis by the MPO or UDOT. If UDAQ appeals to the Governor, the final conformity determination must have concurrence of the Governor.

If the UDAQ does not appeal to the Governor within 14 days of receiving written notice of approval of the conformity analysis, the MPO or UDOT may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to any member or employee of UDAQ, Utah Air Quality Board, UDOT, State Transportation Commission, or the relevant MPO.

G. PUBLIC CONSULTATION PROCEDURES

When making a conformity determination, the MPO (or UDOT, for non-attainment areas not included in an MPO) has established and will continue to implement a proactive public involvement process which provides for review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of Title 23 Highways CFR Part 450.316(b) ***Metropolitan transportation Planning Process: Elements***, Title 40 Protection of Environment CFR §93.112 ***Criteria and Procedures: Consultation***, and Title 49 Transportation CFR Part 7.43 ***Fee schedule***.

In addition, the MPO (or UDOT, for non-attainment areas not included in an MPO) has established and will continue to implement a proactive public involvement process. This process specifically addresses in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

H. CONTROL MEASURES

As specified in Title 40 Protection of Environment CFR 93.122 (a)(4)(ii) ***Procedures for determining regional transportation-related emissions***, written commitments from the responsible agency must be obtained prior to conformity determination for any transportation control measures identified in the SIP which are not included in the MPO's transportation Plan or TIP. Written commitments, as specified in Title 40 Protection of Environment CFR 93.101 ***Definitions,*** must be fulfilled and should address funding and implementation schedule issues consistent with the control measure as defined in the SIP. This provision applies to control measures not regulated by the state if these measures are used to claim emission reductions as part of the conformity determination.

I. PROJECT LEVEL MITIGATION MEASURES

As specified in Title 40 Protection of Environment CFR 93.125 (c) ***Enforceability of design concept and scope and project-level mitigation and control measures***, written commitments, as specified in Title 40 Protection of Environment CFR 93.101 ***Definition,*** from the project sponsor must be obtained for any transportation project level mitigation measures identified as conditions for NEPA process completion, and necessary for a positive project level conformity determination (which may include a hot-spot analysis). Project sponsors must comply with such commitments. Mitigation measures directed at reducing project related construction emissions (such as a dust control plan) but not specifically identified as necessary for a positive project level (or "Hot Spot) conformity finding, do not require written commitments.