

DRAFT
3/24/03

MEMORANDUM OF UNDERSTANDING

BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION,
THE FEDERAL TRANSIT ADMINISTRATION,
THE ENVIRONMENTAL PROTECTION AGENCY,
THE TEXAS DEPARTMENT OF TRANSPORTATION,
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,
THE XXXXXXXXX METROPOLITAN PLANNING ORGANIZATION AND
AFFECTED LOCAL AGENCIES

I. PURPOSE

This Memorandum of Understanding (MOU) is for the purpose of addressing the adoption and application of the Texas Department of Transportation's *Guide to Accepted Mobile Source Emission Reduction Strategies* (MoSERS). MOSERS is a dynamic reference document meant to

(1) provide a uniform evaluation process for mobile source emission reduction strategies not evaluated through traditional travel demand forecasting models for nonattainment areas within Texas;

(2) expedite conformity reviews performed by the reviewing interagency consultation partners

II. AUTHORITY

A. Within the planning regulations, 23 CFR 450.210(a)(1) states that data analysis and evaluation of alternatives for a transit, highway, bikeway, or pedestrian program be coordinated between the state and MPO.

B. Coordination is also called for in 23 CFR 450.210(a)(12), which outlines coordinated transportation planning with analysis of environmental effects of transportation actions.

C. In nonattainment or maintenance areas, 23 CFR 450.312(c) states that the MPO shall coordinate the development of the metropolitan transportation plan with the state implementation plan (SIP) development process including the development of the transportation control measures. The MPO shall develop or assist in developing the transportation control measures.

D. 23 CFR 450.312(h) states that the State shall cooperatively participate in the development of metropolitan transportation plans.

E. Comparison of transportation control measures is addressed in 40 CFR 51.213(c) which states that the data must be maintained in such a way as to facilitate comparison of the planned and actual efficacy of the transportation control measures.

F. As specified in 40 CFR 51.859(c) discussing procedures for conformity determinations, the analyses required must be based on the latest and most accurate emission estimation techniques available, unless such techniques are inappropriate.

G. The Texas Air Quality Technical Working Group (TWG), comprised of agency representatives across the state responsible for meeting transportation/air quality requirements, previously formed subcommittees to review mobile source emission reduction strategy analysis methods and make recommendations to provide uniformity for interagency consultation review, and to refine the conformity review process within Texas. These efforts were undertaken to expedite the interagency consultation review process.

H. The January 18, 2001, joint FHWA-FTA-EPA memorandum on the use of latest planning assumptions in conformity determinations applies as follows:

1. The memorandum notes that 40 CFR 93.105(c)(1)(i) specifically requires that the interagency consultation process be used to evaluate and choose assumptions to be used in conformity analyses.
2. The memorandum also states that the consultation process should be used to evaluate assumptions for quality and accuracy as needed prior to use in conformity.
3. The memorandum clarifies that EPA guidance (61 FR 36130, July 9, 1996) for meeting the intent of Section 93.110(e) of the conformity rule stated that conformity determinations must use the latest existing information regarding the effectiveness of all relevant SIP control measures, including TCM.

III. DEFINITIONS

A. Affected local agencies: Includes, at a minimum, the MPOs, local public transit agencies, and local air quality agencies, as defined in 30 TAC 114.260.

B. Metropolitan planning area: The metropolitan planning area boundary shall, as a minimum, cover the urbanized area and the contiguous geographic area likely to become urbanized within the twenty-year forecast period covered by the metropolitan transportation plan. Metropolitan planning area boundaries shall be limited to the boundaries approved by the governor, and may include new nonattainment areas as agreed to by the governor and the MPO.

C. Nonattainment area: An area is designated nonattainment by EPA when it fails to meet national ambient air quality standards for any criteria pollutant. An area can be designated nonattainment for several criteria pollutants.

D. State implementation plan: A formal document required for the federal Clean Air Act for states with nonattainment areas. It is the state's strategy for meeting air quality goals. Failure to process an approved SIP can result in sanctions on the state from the Federal government.

IV. GENERAL PROVISIONS

A. Adoption and Application

In an effort to promote uniformity to expedite conformity reviews, the interagency consultation partners and MPOs designated as nonattainment areas adopt and support the application and further development of MOSERS.

B. Process for Continuous and Cooperative Improvement

MPOs may propose alternative evaluation methods for both new projects and those included in MOSERS to be peer-reviewed and incorporated into MOSERS following this process:

1. An MPO must submit the proposed alternative evaluation method in writing, fully disclosing the analytical process and clearly denoting variable names, data units, and potential data sources, to each of the interagency consultation partners.
2. The interagency consultation partners will be allowed a maximum of 30 days to review and issue approval of the proposed alternative evaluation method or return comments or questions to the submitting MPO. During this period the interagency consultation partners are encouraged to hold a teleconference to discuss the proposed alternative evaluation method.
3. Should the interagency consultation partners approve the proposed alternative evaluation method:
 - a) TxDOT will produce an addendum for distribution.
 - b) Addendums will be transmitted to each interagency consultation partner and those affected local agencies within nonattainment areas.
4. Should the interagency consultation partners issue comments or questions, the MPO must respond to the returned comments within a period of 14 days after their receipt

5. If after the MPO response, the interagency consultation partners fail to approve the proposed alternative evaluation method, the submitting MPO may initiate the conflict resolution process.

C. Conflict Resolution Process

Conflicts concerning transportation-related emissions that may arise between or among the signatory parties will be resolved according to the following process:

1. The conflict resolution process is initiated by written notice from one or more affected parties to all other affected parties.
2. Upon receipt of the written notice, the representatives of the affected parties will meet within thirty (30) days and determine reasonable measures to resolve the conflict.
3. If the conflict is resolved, the party or parties that initiated the conflict will notify all other affected parties of its resolution in writing within seven (7) working days.
4. If after 60 days the conflict has not been resolved and affected parties so notified, it will be referred to the interagency consultation process specified in 30 TAC 114.260 for resolution.
5. If after 30 days the conflict has not been resolved and affected parties so notified, the matter will be referred to the Executive Directors of the Texas Department of Transportation and Texas Commission on Environmental Quality for final resolution.

V. RESPONSIBILITIES

A. MPO

XXXXXX MPO is responsible for the application of and the development and submittal of alternative evaluation methods to be included in MOSERS through the formal process outlined in this memorandum.

B. TxDOT, TCEQ, FHWA/FTA, and EPA

TxDOT, TCEQ, FHWA/FTA, and EPA will be responsible for the review and comments on all proposed analysis methods submitted through the formal process outlined in this memorandum. TxDOT, TCEQ, FHWA/FTA, and EPA will expeditiously review analyses submitted using methods described in MOSERS.

VI. AGREEMENT TERMS

- A. This MOU shall remain in effect as long as the XXXX MPO and non-XXXXXX MPO areas are designated nonattainment or maintenance areas.

B. This MOU will be reviewed, and revised if necessary, at least every five years for as long as the MOU remains in effect.

C. This MOU may be revised at any time by agreement from all parties.

VII. SIGNATORIES

The following signatory parties do hereby acknowledge understanding and agree to comply with the provisions and terms of this MOU.

XXXXXX MPO

Environmental Protection Agency

Federal Highway Administration

Federal Transit Administration

Texas Commission on Environmental Quality

Texas Department of Transportation