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

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## **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, programs and projects for areas that are in nonattainment/maintenance of the National Ambient Air Quality Standards (NAAQS) to ensure consistency with air quality planning efforts. The agencies that work in these areas, which include air quality, transportation, metropolitan planning organizations, transit and local governments, must work together to perform this evaluation.

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

This document establishes a detailed interagency consultation process among the Indiana Department of Environmental Management (IDEM), the Indiana Department of Transportation (INDOT), the United States Environmental Protection Agency (US EPA), the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA) for the purpose of evaluating the conformity of the transportation plans, improvement programs and projects for the State of Indiana with the requirements of the federal Clean Air Act Amendments and the State Implementation Plan (SIP).

The United States Environmental Protection Agency and the United States Department of Transportation have promulgated regulations at 40 CFR Parts 51 and 93, 23 CFR Part 450, and 49 CFR Part 613 respectively describing the procedures to be used in the consultation process. Attached hereto and incorporated herein this agreement are the Interagency Consultation Group Conformity Consultation Guidance (Appendix A) which details the roles and responsibilities of conformity stakeholders as well as metropolitan planning organization resolutions (Appendix B) that formally

adopt the Interagency Consultation Group Conformity Consultation Guidance document into each Metropolitan Planning Organization (MPO) transportation conformity protocol. The signatories to this agreement agree to follow the individual MPO transportation conformity protocols and abide by the consultation procedures in the adopted resolution.

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

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

## **I. Definitions**

AQCA - Air Quality Conformity Analysis  
FHWA - Federal Highway Administration  
FONSI - Finding of No Significant Impact  
FTA - Federal Transit Administration  
HPMS - Highway Performance Monitoring System  
ICG - Interagency Consultation Group  
IDEM - Indiana Department of Environment Management  
INDOT - Indiana Department of Transportation  
INSTIP - Indiana Statewide Transportation Improvement Program  
LOS - Level of Service  
MPO - Metropolitan Planning Organization  
MVEB - Motor Vehicle Emissions Budget  
NEPA - National Environmental Policy Act  
ROD - Record of Decision  
SIP - State Implementation Plan  
TCM - Transportation Control Measures  
TDM - Travel Demand Model  
TIP - Transportation Improvement Program  
TP - Transportation Plan

US DOT - United States Department of Transportation  
US EPA - United States Environmental Protection Agency  
VMT - Vehicle Miles Traveled

## **II. Affected Agencies**

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

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

1. The Indiana Department of Environmental Management (IDEM);  
*Commissioner or Designee*
2. The Indiana Department of Transportation (INDOT);  
*Commissioner or Designee*
3. The United States Environmental Protection Agency (US EPA), Region 5;  
*Administrator or Designee*
4. The Federal Highway Administration (FHWA), Indiana Division Office;  
*Administrator or Designee*
5. The Federal Transit Administration (FTA), Region 5;  
*Administrator or Designee*

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

### **Overview**

These procedures outlined in this document implement the interagency consultation process as required in 93.105(b) for Indiana isolated rural nonattainment/maintenance areas, and include procedures to be undertaken by the Indiana Department of Transportation (INDOT), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Indiana Department of Environmental Management (IDEM), and US EPA before making project level conformity determinations.

Transportation conformity is the process to assess the compliance of a Transportation Plan (TP), Transportation Improvement Program (TIP), or transportation project with the air quality State Implementation Plan (SIP). A conformity determination is based on the conformity regulations in 40 CFR Part 93 and consistency between the applicable emissions budgets of the TP and/or the TIP with the SIP.

Additional details on consultation are contained in the Indiana guidance document on transportation conformity "Interagency Consultation Group Conformity Consultation Guidance, August 2007." This guidance document provides detailed guidance on conformity consultation and procedures but is

not legally binding. Only the procedures approved into the State Implementation Plan (SIP) as part of this MOU are legally binding.

**a. Interagency Consultation Group**

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

- Federal agencies: FHWA, US EPA, FTA
- State Agencies: INDOT, IDEM

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

**b. Initial Interagency Consultation Group Meeting**

The INDOT is responsible for initiating the ICG consultation when a new conformity demonstration is being initiated in an isolated rural nonattainment/maintenance area. Often INDOT utilizes consultants to assist with project development, and so the following INDOT activities may be coordinated by consultant staff working on behalf of INDOT.

The Initial ICG Meeting (typically a conference call) shall include, but not be limited to, all of the agencies listed above. The INDOT shall schedule conference calls for a time that is acceptable to all other ICG representatives. The purpose of the Initial ICG Meeting is to establish consensus regarding the project level conformity demonstration schedule, latest planning assumptions, and analysis methodology. If a previous conformity demonstration was made, the ICG may reaffirm the existing practices. The INDOT shall provide the ICG with the necessary items as soon as possible prior to the conference call. The INDOT shall respond verbally or by email to all questions and comments from the ICG members.

The INDOT shall prepare initial Meeting Minutes to document agency concurrence regarding items and all decisions made during the initial consultation meeting. The INDOT shall forward these Meeting Minutes and the Project List to the ICG as soon as reasonably possible. The INDOT can follow-up with ICG representatives as needed during the consultation period to clarify outstanding issues. The INDOT shall schedule a follow-up meeting if needed (i.e. agency concurrence can not be reached). The INDOT shall also schedule a meeting if any ICG member(s) call a meeting of this group to discuss issues under the purview of the ICG as described below, including whether certain events would trigger the need to make a new project level conformity determination. The INDOT shall be responsible for preparing and distributing the Meeting Minutes from that meeting.

Persons of any organizational level in the member agencies may attend meetings of the ICG.

All meetings of the ICG shall be open to the public.

Meeting frequency shall be as needed, unless there is consensus among the federal and state transportation agencies and air quality agencies to meet on a specific schedule (i.e. quarterly, biannually, annually, etc.). In most cases, consultation shall be via conference call and/or email unless the ICG decides that certain items may require a face-to-face meeting and could not be handled via conference call or email.

**c. Affected Agency Responsibilities**

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

INDOT is the state agency responsible for transportation planning and project implementation, and is a key stakeholder in statewide transportation planning and conformity processes. INDOT also develops the Indiana statewide transportation improvement plan (INSTIP) that encompasses the TIPs of all Indiana metropolitan planning organizations (MPO).

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

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

**d. Affected Agency Roles**

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

<b>Agency</b>	<b>Roles</b>
INDOT	<ul style="list-style-type: none"><li>• Runs Statewide travel demand model (TDM)</li><li>• Prepares NEPA and AQCA document for isolated rural nonattainment/maintenance areas</li><li>• Manages public review and comment period</li><li>• Provides a final copy of AQCA document to ICG agencies</li><li>• Maintains and manages conformity process schedule</li></ul>

Agency	Roles
IDEM	<ul style="list-style-type: none"> <li>• Develops motor vehicle emissions budgets (MVEBs)</li> <li>• Creates and develops state implementation plans (SIPs)</li> <li>• Develops SIP emission factors using the most current US EPA approved emissions model (or delegates responsibility as agreed with other appropriate ICG parties)</li> <li>• Provides draft copy of MVEB and SIPS to ICG for review and comment</li> <li>• Reviews AQCA and comments within the allotted time</li> </ul>
FHWA	<ul style="list-style-type: none"> <li>• Coordinates federal review process of the conformity determination</li> <li>• Facilitate additional consultation as necessary if adverse comments are received during consultation</li> <li>• Monitors INDOT project level conformity process schedule</li> <li>• Assists other ICG parties with commitment follow-up</li> <li>• Provides technical guidance and advice on conformity</li> <li>• Reviews conformity documentation</li> <li>• Issues United States Department of Transportation (US DOT) conformity determination letter</li> </ul>
FTA	<ul style="list-style-type: none"> <li>• Reviews conformity documentation</li> <li>• Reviews AQCA and comments within the allotted time</li> </ul>
US EPA	<ul style="list-style-type: none"> <li>• Promulgates conformity regulations</li> <li>• Approves the SIP and motor vehicle emissions budgets (MVEBs)</li> <li>• Provides technical advice and guidance on conformity</li> <li>• Reviews conformity determination</li> <li>• Reviews final AQCA and submits a recommendation for conformity finding letter</li> </ul>

**e. Consultation on Project Level Conformity Analysis in Rural Nonattainment/Maintenance Areas**

INDOT shall consult with the ICG on the assumptions and approach to the project level conformity analysis during the preparation of the AQCA document. INDOT shall consult with the ICG, at a minimum, on the following topics:

- Identification of exempt projects (by list or reference)
- Discussion of which activities trigger a conformity analysis (93.105(c)(2)(1))
- Identification of projects included in each analysis scenario
- Travel demand modeling description (assumptions, methods, geographical and functional classification coverage and VMT Summary Table for various analysis years)
- Discussion of data collection efforts and statewide travel demand model development (93.105(c)(6))
- Description of the emissions modeling (emissions model used, methodology, assumptions, and sample input/output printouts)
- Description of post process analysis (including off-network VMT)
- Tabulation of analysis results, including the calculated emissions of the applicable pollutants and/or precursors, as per 40 CFR 113.118(a) and 93.119(d) showing that required conformity tests were met

- Discussion of other relevant observations or issues
- An outline of the progress in implementing TCMs in the applicable SIP(s) and an explanation of any delays incurred in implementing the TCMs (if applicable)

**f. Distribution of Final Documents as Required by 93.105(c)(7)**

After INDOT has addressed all outstanding ICG and public comments on the draft AQCA, INDOT shall forward the final conformity analysis and documentation to FHWA and the ICG for a federal conformity finding determination. FHWA shall initiate formal consultation and shall provide 30 days for written comments from the ICG members. Once FHWA has assured that all outstanding ICG conformity consultation issues have been satisfactorily addressed, FHWA shall issue the conformity determination. The conformity determination may be issued in the form of a letter, or as part of the formal NEPA approval (Finding of No Significant Impact (FONSI) or Record of Decision (ROD)). FHWA shall provide a copy of the conformity determination to ICG members.

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

IDEM has responsibility for developing state implementation plans (SIPs) and, as such, needs to assure that assumptions made during the emissions analysis process are consistent with those in the appropriate SIPs. The SIP will normally be developed independently of the ICG. However, all ICG agencies shall be provided with information and opportunity to participate in the development of the SIP with a focus on the setting of emission budgets and developing Transportation Control Measures (TCMs, if appropriate). Public involvement shall be in accordance with IDEM's public involvement procedures. Key documents shall be posted on IDEM's website. SIP development will normally cover inventory development, determination of emission reductions necessary to achieve and/or maintain federal air quality standards, transportation and other control strategies that may be necessary to achieve these standards, contingency measures, and other such technical documentation as required.

IDEM may request that INDOT provide travel activity data for isolated rural nonattainment/maintenance areas for use in developing the on-road motor vehicle emissions inventory. If new transportation control strategies or TCMs are necessary to achieve and/or maintain federal air quality standards, IDEM may request that INDOT evaluate potential new measures for isolated rural nonattainment/maintenance areas. The ICG shall be convened to discuss possible TCMs for inclusion in the SIP. This SIP and consultation process shall define the motor vehicle emissions budget (MVEB), and its various components, that will be used for future conformity determinations of the TP and TIP. Before the draft SIP begins the public review process, the ICG shall have an opportunity to review and comment on the proposed MVEB.

IDEM shall circulate the draft SIP for public review, and all comments shall be addressed. IDEM shall then transmit the adopted submittal, along with the public notice, public hearing transcript and a summary of comments and responses, to the US EPA.

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

The affected agencies shall jointly identify and select reasonably available TCMs to reduce mobile source emissions. IDEM shall make final determination of any TCMs to be included within the SIP.

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

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

As part of a new conformity demonstration in an isolated rural nonattainment/maintenance area, INDOT shall document the status of TCMs that have not been completed, by comparing progress to the implementation steps in the SIP. Where TCM emissions reductions are included as part of the MVEB, INDOT shall also estimate the portion of emission reductions that have been achieved. If there are funding or scheduling issues for a TCM, INDOT shall describe the steps being undertaken to overcome these obstacles, including means to ensure that funding agencies are giving TCMs maximum priority. INDOT may recommend substitution to ICG of a new TCM for all or a portion of an existing TCM that is experiencing implementation difficulties as detailed in Section VIII of this document.

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

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

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

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

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

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

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

As set forth in 40 CFR 93.125(c), prior to determining that a transportation project is in conformity, the recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local CO, PM<sub>10</sub>, or PM<sub>2.5</sub> impacts. Before a conformity determination is made, written commitments must also be obtained for project-level mitigation or control measures which are conditions for making the project level conformity determination are included in the project design concept and scope which is used in the regional emissions analysis required by 40 CFR 93.118 and 119 or used in the project-level hot-spot analysis required by 40 CFR 93.116. Consultation on these commitments shall take place as a part of the consultation process prior to the conformity analysis and determination.

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

Interagency consultation procedures for specific conformity issues are described below:

### **a. Defining regionally significant projects (40 CFR 93.105 (c) (1) (ii))**

Regionally significant projects are defined as transportation projects (other than an exempt project) that are on a facility which serves regional transportation needs and would normally be included in the coded network for the statewide transportation demand forecast model, including at a minimum all principal arterial highways. INDOT's travel model roadway network may also include other types of facilities for reasons of functionality or connectivity that would not normally be considered regionally significant. INDOT shall periodically review with the ICG the types of facilities and projects that are coded in the network but which INDOT recommends should not be classified as regionally significant (and which therefore would not trigger a new NEPA conformity demonstration before they could be amended into the Indiana Statewide Transportation Improvement Program (INSTIP)). INDOT shall document the decisions of the ICG for future reference. The ICG shall also discuss and decide that projects would not be found regionally significant according to the modeling definition above, but should be treated as regionally significant for conformity purposes. This consultation shall take place prior to the beginning of the conformity modeling analysis.

### **b. Determination of significant change in project design concept and scope (40 CFR 93.105 (c) (4) and (5))**

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

**c. Determining if exempt projects should be treated as non-exempt (40 CFR 93.105 (c) (iii))**

INDOT shall identify all Statewide Transportation Plan and INSTIP projects in the isolated rural nonattainment area that meet the definition of an exempt project, as defined in the conformity regulations. INDOT shall provide a list of exempt projects to the ICG for review prior to releasing the project level NEPA conformity demonstration for public comment. If any member of the ICG believes an exempt project has potentially adverse emission impacts or interferes with TCM implementation, they can bring their concern to the ICG for review and resolution. If it is determined by the ICG that the project should be considered non-exempt, INDOT shall make appropriate changes to the conformity analysis, as required.

**d. Treatment of non-FHWA/FTA regionally significant projects (40 CFR 93.105(c)(4))**

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

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

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

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

The affected agencies shall work together to evaluate activities that may require a conformity determination. 40 CFR 93.102 (Applicability) provides a list of activities that require a new conformity determination.

**g. Consideration of Regionally Significant Projects (40 CFR 93.105 (c)(4) & (c)(1)(ii))**

After ICG consultation, the affected agencies shall decide which projects are regionally significant and to be included in the transportation model. INDOT or the MPO shall highlight all regionally significant added capacity projects within the regional emissions analysis. All federally funded and nonfederally funded regionally significant projects are to be incorporated into the appropriate local and statewide TPs and TIPs.

**h. Consultation for Evaluating Whether Project(s) Shall Be Exempt Vs. Non-Exempt (40 CFR 93.105(c)(1)(iii))**

The affected agencies shall evaluate whether projects otherwise exempt from conformity (40 CFR 93.126 and 93.127) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason.

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

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

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

**a. Consultation Structure and Process**

Project level conformity demonstrations in isolated rural nonattainment/maintenance areas that require a new regional emission analysis shall be developed through the ICG. The INDOT is responsible for convening meetings of the ICG.

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

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

Public involvement in the development of the NEPA document shall be provided in accordance with the INDOT Public Involvement Manual which was developed in accordance with 23 CFR 450 and 23 CFR 771.

**b. Localized CO, PM10, and PM2.5 Hot Spot Project Level Consultation**

Hot-spot analysis is defined in 40 CFR 93.101 as an estimation of likely future localized CO, PM<sub>10</sub>, and PM<sub>2.5</sub> pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and

highway or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality. Such an analysis is a means of demonstrating that a transportation project meets the CAA conformity requirements to support state and local air quality goals with respect to potential localized air quality impacts (40 CFR 93.116).

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

Also, as required by 40 CFR 93.105 (c) (4) and (5): INDOT shall consider a significant change in design concept and scope to be one that would alter the coding of the project in the statewide travel demand model. When a project(s) has a change in design concept and scope from that assumed in the most recent conformity demonstration, INDOT shall initiate an update of the conformity demonstration as part of a NEPA reevaluation.

To meet statutory requirements, the Transportation Conformity Rule requires PM hot spot analyses to be performed for projects of air quality concern located in PM<sub>2.5</sub> nonattainment or maintenance areas. The focus of the rule is on what are called projects of air quality concern. These are certain highway and transit projects that involve significant levels of diesel traffic and require a hot spot analysis. These project types are defined in 40 CFR 93.123(b)(1) as the following:

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

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

- Exempt: projects that are exempt from air conformity are also exempt from hot spot analysis.
- Projects Not of Air Quality Concern: if a project does not meet the criteria to be classified as exempt, INDOT shall determine if the project is of air quality concern. If INDOT is not sure if the project is of air quality concern, INDOT shall consult with US EPA, US DOT, and IDEM to determine the correct classification.
- Projects of Air Quality Concern: if a project is determined to be a project of air quality concern, INDOT shall consult with FHWA, IDEM, US EPA and others as appropriate to

prepare the hot-spot conformity demonstration. US DOT shall consult with the above agencies to assure all hot-spot conformity demonstration issues have been addressed prior to providing an opportunity for public comment (per the approved INDOT Public Involvement Manual). Once US DOT determines that all applicable requirements have been addressed (including those listed above for MPO and isolated rural non-attainment areas), US DOT will be able to issue the project level hot-spot conformity determination, as part of the overall project level conformity finding. The US DOT conformity finding will be issued either as a separate letter or be included as part of the NEPA approval (FONSI or ROD).

If the project will require a qualitative hot spot analysis, the March 2006 US EPA/FHWA Guidance document "*Transportation Conformity Guidance for Qualitative Hot spot Analyses in PM2.5 and PM10 Nonattainment and Maintenance Areas*" should be referenced for more information. This March 2006 US EPA/FHWA Guidance document may be superseded at some point in the future and all affected agencies should reference this revised document at that time for more information.

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

The adopted IDEM and INDOT public involvement procedures detail the methods used to solicit public comments throughout the urban transportation planning and conformity processes. The public involvement plan for IDEM, titled the "*Guide for Citizen Participation*," can be found online at <http://www.state.in.us/idem/5803.htm>. The public involvement plan for INDOT, titled the "*INDOT Public Involvement Procedures*," can be found online at <http://www.in.gov/indot/files/NEPAPIProceduresPresentation.pdf>. In accordance with 23 CFR 450.316(b)(1)(I), any modification to these procedures requires a minimum public comment period of 45 days before the public involvement process is formally modified.

The public consultation process shall be consistent with the above referenced public involvement procedures.

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

There shall be a periodic review of the effectiveness of the public involvement process to ensure that it provides full and open access, and if necessary, revisions to the process shall be made.

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

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

40 CFR 93.105(d) describes the process for resolving conflicts related to conformity determinations. Should IDEM have specific concerns regarding INDOT's conformity determination IDEM shall notify INDOT, as well as the ICG, of its concerns in writing. Staff of IDEM and INDOT shall act in good faith to resolve the conflict in a manner acceptable to all parties. If the staff is unsuccessful, the Senior Management within IDEM and INDOT shall act to resolve differences in a manner acceptable to all parties. INDOT shall be responsible for responding to IDEM's concerns in writing. Once IDEM receives a letter(s) of response from INDOT, and should IDEM determine that the letter(s) of response does not adequately resolve IDEM's concerns, IDEM shall have fourteen days from the date identified by the post mark on the letter(s) of response to appeal to the Governor. If IDEM does not appeal within this fourteen day timeframe, INDOT may proceed with the final conformity determination. If IDEM appeals to the Governor, then the conformity determination must have the concurrence of the Governor before it is accepted as final.

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

---

**List of signatories appearing on separate pages:**

Thomas W. Easterly, Commissioner  
Indiana Department of Environmental Management

Michael W. Reed, Commissioner  
Indiana Department of Transportation

Bharat Mathur, Acting Regional Administrator  
United States Environmental Protection Agency - Region 5

Robert F. Tally, Jr., Division Administrator  
Federal Highway Administration - Indiana Division

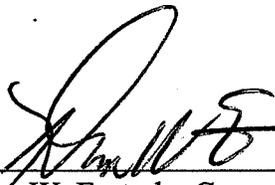
Marisol Simon, Regional Administrator  
Federal Transit Administration - Region 5

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**MEMORANDUM OF UNDERSTANDING  
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INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
INDIANA DEPARTMENT OF TRANSPORTATION  
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Note: Signatures appear on separate and multiple pages



Thomas W. Easterly, Commissioner  
Indiana Department of Environmental Management

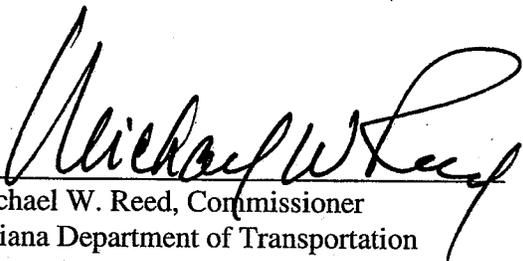
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\_\_\_\_\_  
Michael W. Reed, Commissioner  
Indiana Department of Transportation

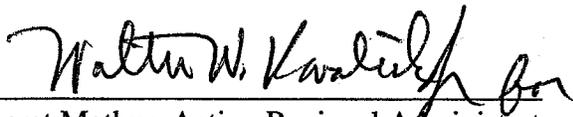
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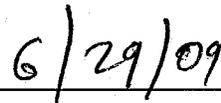
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Bharat Mathur, Acting Regional Administrator  
United States Environmental Protection Agency - Region 5

Date: \_\_\_\_\_

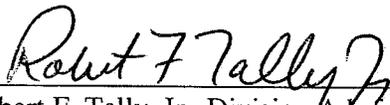


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\_\_\_\_\_  
Robert F. Tally, Jr., Division Administrator  
Federal Highway Administration - Indiana Division

Date: 6/10/2009

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**MEMORANDUM OF UNDERSTANDING  
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INDIANA DEPARTMENT OF TRANSPORTATION  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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Marisol Simon, Regional Administrator  
Federal Transit Administration - Region 5

Date: 6-13-2009