

ATTACHMENT A

MADISON COUNTY TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL

Conformity Procedures

Current federal law does not require that EPA's detailed procedures for determining the conformity of plans, programs and projects be included in a "Conformity SIP". This SIP revision however must include procedures for interagency consultation (Federal, State and local), resolution of conflict and public consultation set forth in 40 CFR 93.105, and provisions for written commitments for control and mitigation measures required by 40 CFR 93.122(a)(4)(ii) and 125(c).

As set forth in CFR 93.122(a)(4)(ii), emission reduction credit from control measures that are not included in the transportation plan and transportation improvement plan and that do not require a regulatory action in order to be implemented may not be included in the emissions study unless the conformity determination 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 that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and such commitments must be fulfilled. Consultation on these commitments will 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 MPO, other 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, PM₁₀, or PM_{2.5} 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 conformity determinations for a transportation plan or TIP and 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 will take place as a part of the consultation process prior to the conformity analysis and determination.

MADISON COUNTY TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL

Interagency Consultation Procedures

I. Definitions

AQCA - Air Quality Conformity Analysis
CATS – City of Anderson Transit System
FHWA - Federal Highway Administration
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
MCCOG - Madison County Council of Governments
MPA - Metropolitan Planning Area
MPO - Metropolitan Planning Organization
MITS – Muncie Indiana Transit System
MVEB - Motor Vehicle Emissions Budget
NEPA - National Environmental Policy Act
SIP - State Implementation Plan
TRAM – TRAM/New Interurban
TCM - Transportation Control Measure
TDM - Travel Demand Model
TIP - Transportation Improvement Program
TP - Transportation Plan
USDOT - United States Department of Transportation
USEPA - United States Environmental Protection Agency
VMT - Vehicle Miles Traveled

II. General

These procedures implement the interagency consultation process for Madison County, and include procedures to be undertaken by the Madison County Council of Governments (MCCOG), Delaware-Muncie Metropolitan Plan Commission (DMMPC), Indiana Department of Transportation (INDOT), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), State, EPA and local air and transit agencies (where appropriate), before making transportation conformity determinations on the Transportation Plan (TP) and Transportation Improvement Program (TIP).

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 MPOs with detailed guidance on conformity consultation and procedures but it is not legally binding. Only the procedures approved into the State Implementation Plan (SIP) are legally binding.

A. Interagency Consultation Group

To conduct consultation, staff involved in conformity issues for their respective agencies will 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 staff of:

- Federal agencies: FHWA, EPA, FTA
- State Agencies: INDOT, IDEM
- Regional planning agencies: MCCOG, DMMPC
- Local transit agencies/operators: CATS, New Interurban, MITS
- Local air agencies (where appropriate):

The Madison County Council of Governments (MCCOG) will maintain a directory for the current membership agencies of the ICG. These agencies are responsible to notify ICG upon individual contact changes.

B. Initial Interagency Consultation Group Meeting

The Initial ICG Meeting (typically a conference call) should include, but not be limited to, all of the agencies listed above. The MCCOG should schedule conference calls for a time that is acceptable to all other ICG representatives. The ICG agencies should establish the practice of having at least 1 staff member who can serve as an alternate contact if the primary contact is unavailable. The purpose of the Initial ICG Meeting is to establish consensus regarding the TP update/amendment schedule, latest planning assumptions, and analysis methodology. If there are no changes, the ICG may reaffirm the existing practices. The ICG should be provided with the necessary items as soon as possible or a minimum of 7 calendar days prior to the conference call.

The TP will be fiscally responsible and the TIP will be fiscally constrained. The Indiana Statewide Transportation Improvement Plan (INSTIP) will be consistent with the TIPs in order to comply with the regulations in 23 CFR 450.216(b). The INDOT and MCCOG will reach consensus regarding the list of INDOT-sponsored projects to be included in the MPO TP, project design concept and scope, and the projected year that each project is expected to be open to traffic. INDOT jurisdiction projects are fiscally constrained in the context of the INDOT Statewide Transportation Plan, and thus the MCCOG will not add INDOT jurisdiction projects other than those listed in the INDOT Statewide Transportation Plan (TP) without prior concurrence from INDOT or identifying an alternate funding source.

The MCCOG will prepare initial Meeting Minutes to document agency concurrence regarding items and all decisions made during the initial consultation meeting. The MCCOG will forward these Meeting Minutes and the Project List to the ICG as soon as reasonably possible. The MCCOG can follow-up with ICG representatives as needed during the consultation period to clarify outstanding issues. The MCCOG will schedule a follow-up meeting if needed (i.e. agency concurrence can not be reached). The MCCOG will also schedule a meeting if any ICG member(s) calls 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 conformity determination for the Transportation Plan (TP) and Transportation Improvement

Program (TIP). The agency requesting the follow-up meeting will 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 will be open to the public, but not necessitate official public notification.

Meeting frequency will 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.). The MCCOG will also consult with these agencies to determine which items may not require a face-to-face meeting and could be handled via conference call or email.

III. Consultation for an update or amendment of the Transportation Plan (TP) and/or Transportation Improvement Plan (TIP) when a new regional analysis is required

A. Consultation Structure and Process

TP and/or TIP amendments that require a new regional emission analysis will be developed through the ICG. The MCCOG is responsible for convening meetings of the ICG.

Early in the TP and/or TIP development process, the MCCOG will develop a schedule for key activities and meetings leading up to the adoption of the TP and/or TIP. In developing the draft TP and/or TIP, the MCCOG will bring important TP and/or TIP related issues to the ICG for discussion and feedback. The MCCOG 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, such as the TP and/or TIP schedule(s), important TP and/or TIP related issues, and the draft TP and/or TIP, will also be transmitted to the ICG for discussion and feedback. Similar consultation will occur with TP amendments if a new regional analysis is required. It should be noted that amendments to the TP are few and infrequent.

Public involvement in the development of the TP and/or TIP will be provided in accordance with the MCCOG adopted public participation procedures.

Policy decisions and actions pertaining to the TP and/or TIP are the responsibility of the MCCOG and will be made through the MCCOG Policy Committee and its standing committee structure. The MCCOG staff will respond to all significant comments. The MCCOG will transmit the TP and/or TIP related materials to be discussed at the Transportation Policy Board/Committee meeting(s) to the ICG prior to the meeting, or on occasion, may distribute materials at the meetings. Staff and policy board members of the ICG agencies are also invited to attend and participate in these meetings.

B. Agency Roles and Responsibilities

Expected participation of key agencies in TP and/or TIP development and review, as follows:

AGENCY	ROLES & PARTICIPATION
MCCOG	<ul style="list-style-type: none">• Runs travel demand model (TDM) for the MCCOG MPA non-attainment area• Runs Mobile 6 (or updated version) emissions model in consultation with IDEM• Prepares Conformity Demonstrations for the TP and/or TIP. Responsibilities of the MCCOG should be mutually agreed upon by other appropriate ICG parties• Prepares the AQCA document for the Madison County non-attainment area• Provides a final copy of the AQCA, TP and/or TIP packages to review agencies• Maintains and manages conformity process schedule
MCCOG & DMMPC	<ul style="list-style-type: none">• Updates/amends the TP and/or TIP in respective MPAs• Manages public review and comment period in respective MPAs• Transportation Policy Board makes the conformity determination and adopts the TP and/or TIP via formal resolution
INDOT	<ul style="list-style-type: none">• Submits INDOT expansion projects to MPOs for inclusion in modeling and conformity demonstration in accordance with the established conformity schedule• Provides traffic count information, HPMS VMT, and other data, as needed, to the MPOs• Reviews AQCA and comments within the allotted time
IDEM	<ul style="list-style-type: none">• Develops motor vehicle emissions budgets (MVEBs) in consultation with all other ICG parties• Creates and develops state implementation plans (SIPs) in consultation with all other ICG parties• Develops SIP emission factors using the approved emissions model (or delegates responsibility as agreed with other appropriate ICG parties)• Reviews AQCA and comments within the allotted time
CATS, MITS & New Interurban	<ul style="list-style-type: none">• Reviews conformity documentation
FHWA	<ul style="list-style-type: none">• Coordinates federal review process of the conformity determination• Facilitates additional consultation as necessary if adverse comments are received during consultation• Monitors conformity process schedule• Assists other ICG parties with commitment and follow-up• Provides technical guidance and advice on conformity• Reviews conformity documentation• Issues USDOT conformity determination letter
FTA	<ul style="list-style-type: none">• Reviews conformity documentation• Reviews AQCA and comments within the allotted time
EPA	<ul style="list-style-type: none">• Promulgates conformity regulations• Approves the SIP and motor vehicle emissions budgets (MVEBs)• Provides technical advice and guidance on conformity• Reviews conformity determination• Reviews final AQCA and submits a recommendation for conformity finding letter

C. TP and TIP Consultation Process

1. Consultation on TP and/or TP Amendment Conformity Analysis:

Consultation on the assumptions and approach to the conformity analysis of the TP and/or TP Amendment will occur during the preparation of these documents. As a part of the TP, TP Amendment, and/or TIP development process, the MCCOG should consult with the ICG, at a minimum, on the following topics:

- Identification of exempt projects (by list or reference)
- 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)
- 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)
- Action(s) by the MCCOG adopting the TP and/or TIP and that a finding of conformity with the SIP is demonstrated

2. Consultation and Notification Procedures for Conformity Analysis of TIP and TIP Amendments:

Consultation on the assumptions and approach to the conformity analysis of the TIP or TIP Amendment will occur during the preparation of the draft TIP or TIP Amendment. When preparing a new TIP, the MCCOG will consult with the ICG on the same topics listed for the TP, as well as the additional topics listed below:

- Identification of exempt projects in the TIP
- Identification of exempt projects which should be treated as non exempt
- Determination of projects which are regionally significant (both FHWA/FTA and non FHWA/FTA funded projects)
- Development of an Interim TIP (in the event of a conformity lapse)

3. Consultation Required in Situations Requiring a Conformity Determination, Including But Not Limited To:

- Add a regionally significant project to the TIP when it has already been appropriately accounted for in the regional emissions analysis for the TP
- Add a non-regionally significant project to the TIP
- Add non-exempt, regionally significant project that has not been accounted for in the regional emissions analysis

- Change in non-exempt, regionally significant project that is not consistent with the design concept and scope or the conformity analysis years
- Activities that trigger a new conformity analysis and/or determination such as the effective date of adequate or approved motor vehicle emissions budgets (a new conformity determination must be made within 2 years)

The ICG review of the draft conformity analysis will typically begin during the public review period. The MCCOG will request the FHWA initiate the formal conformity consultation process. This is typically done by e-mail after the MPO has adopted the TP/TIP update or amendment and issued the associated conformity resolution(s). The ICG will respond promptly to the MCCOG staff with any comments. Members of the public can comment on the draft conformity analysis in writing or in person at MCCOG meetings prior to the close of the 30-day public review period.

After the MPO Board approves the final conformity analysis, the MCCOG will provide the final conformity analysis to FHWA for a federal conformity finding determination. FHWA will initiate formal consultation and, if appropriate, issue the formal conformity finding on behalf of USDOT. The TP update or amendment becomes effective the date the USDOT conformity finding is issued. The TIP update or amendment only becomes effective after the USDOT conformity finding is issued, and the FHWA approves the associated TIP update or amendment into the INSTIP. The MCCOG will transmit electronic copies of the final conformity analysis to the ICG members and place a final copy on the MPO's Web site.

4. Limited Consultation Required:

TP/TIP amendments/updates that only involve exempt projects will be handled in an expedited fashion. The MCCOG will forward the project list to the ICG and request comments within 1-week to see if there are any questions regarding the exempt status of any of the projects. No response will be construed as agency concurrence in the finding that the projects are exempt. The AQCA documentation and/or resolution adopting the exempt amendment will specifically state that the list of exempt projects was circulated to the ICG and there is ICG concurrence that the associated projects are exempt.

Likewise, an ICG Meeting will not be scheduled if a TP/TIP amendment or update does not require a new regional emissions analysis. The MCCOG will forward the project list to the ICG, identify which projects are exempt, non-exempt, and/or not regionally significant, confirm that each project is consistent with the design concept and scope of the project that was modeled in the most recent conformity demonstration, affirm that the open-to-traffic date of each project is consistent with the associated analysis scenario in the most recent regional emissions analysis, confirm that the previous emissions analysis is consistent with the requirements of 40 CFR 93.118 (including that conformity to all currently applicable budgets is demonstrated) and/or 40 CFR 93.119, and establish a deadline for ICG comments (minimum 2-week comment period) on the conformity demonstration. No response will be construed as agency concurrence. A follow-up meeting may be needed if concurrence of all agencies is not reached. The air quality conformity analysis document and/or conformity finding/resolution will specifically reference ICG consultation and concurrence in the TP/TIP amendment/update conformity demonstration.

IV. State Implementation Plan (SIP) Consultation Process

A. SIP Consultation Structure and 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 will 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 (TCM) for inclusion, when and if appropriate. IDEM will provide and update schedules for SIP development that will be available to all agencies and the public. Public participation will be in accordance with IDEM's public participation procedures. Key documents will 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 the MCCOG to provide the travel activity data used to develop the on-road motor vehicle emissions inventory. If new transportation control strategies are necessary to achieve and/or maintain federal air quality standards, IDEM may request that the MCCOG evaluate potential new measures. This SIP process will 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 will have an opportunity to review and comment on the proposed MVEB.

IDEM will circulate the draft SIP for public review, and all comments will be responded to in writing prior to adoption of the SIP. IDEM will then transmit the adopted submittal, along with the public notice, public hearing transcript and a summary of comments and responses, to the EPA.

V. Monitoring of Transportation Control Measures (TCMs)

The periodic conformity analyses for the TP and TIP will include updates of the implementation of TCMs in the applicable SIP. The ICG may request more frequent updates, as needed.

As a part of the new conformity analysis for a TP or TIP, the MCCOG will 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, the MCCOG will also estimate the portion of emission reductions that have been achieved. If there are funding or scheduling issues for a TCM, the MCCOG will describe the steps being undertaken to overcome these obstacles, including means to ensure that funding agencies are giving these TCM maximum priority. The MCCOG may propose substitution of a new TCM for all or a portion of an existing TCM that is experiencing implementation difficulties (see below).

VI. Substitution of TCMs in the SIP

After consultation with the ICG, the MCCOG may recommend and proceed with the substitution of a new TCM in the SIP to overcome implementation difficulties with an existing TCM(s). The substitution will take place in accordance with the MCCOG's adopted TCM substitution procedures, which provide for full public involvement. In the event of possible discrepancies between the MCCOG's TCM Substitution Procedures and those in SAFETEA-LU (Public Law 109-59), the provisions of SAFETEA-LU will govern.

VII. Other Interagency Consultation Group Processes and Procedures

A. Interagency Consultation Procedures for Specific Conformity Issues:

1. Defining regionally significant projects: Regionally significant projects are defined as a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs and would normally be included in the coded network for the regional transportation demand forecast model, including at a minimum all principal arterial highways and all fixed guide-way transit facilities that offer an alternative to regional highway travel. The Madison County 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. The MCCOG will periodically review with the ICG the types of facilities and projects that are coded in the network but which the MCCOG recommends should not be classified as regionally significant (and which therefore would not trigger a new regional emissions analysis if amended into the TP/TIP). The MCCOG will document the decisions of the ICG for future reference. The ICG will also consider projects that would not be found regionally significant according to the modeling definition above, but should be treated as regionally significant for conformity purposes.
2. Determination of significant change in project design concept and scope: Project sponsors should provide timely notice to the MCCOG of any change in the design concept or scope of any regionally significant project in the TP and/or TIP. The MCCOG will consider a significant change in design concept and scope to be one that would alter the coding of the project in the transportation network associated with the regional travel model. When project(s) have a change in design concept and scope from that assumed in the most recent conformed TP and/or TIP, the MCCOG will not normally consider revisions to the TP and/or TIP if such a revision requires a new regional emissions analysis for the entire TP and/or TIP. The MCCOG will evaluate projects that may be considered to have a change in design concept and scope and will consult with the ICG prior to advising the project sponsor as to how the MCCOG intends to proceed with any request to amend the TP and/or TIP.
3. Determining if exempt projects should be treated as non-exempt: The MCCOG will identify all projects in the TP/TIP that meet the definition of an exempt project, as defined in the Conformity regulations. The MCCOG will provide a list of exempt projects to the ICG for review prior to releasing the draft TP/TIP 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, the MCCOG will notify the project sponsor of this determination and make appropriate changes to the conformity analysis, as required.

4. Treatment of non-FHWA/FTA regionally significant projects: Any recipient of federal funding is required to disclose to the MCCOG the design concept and scope of regionally significant projects that do not use FHWA or FTA funds. The MCCOG will request that INDOT and local agencies identify all such projects prior to conducting a new conformity analysis for the TP and/or TIP. As part of the conformity analysis, The MCCOG will also include a written response to any significant comment received about whether any project or projects of this type are adequately accounted for in the regional emissions analysis.
5. Projects that can advance during a conformity lapse. In the event of a conformity lapse, the MCCOG will consult with the ICG to identify projects in the TP and/or TIP that may move forward. The MCCOG will also consult the ICG on the process for preparing an Interim TP and/or TIP.
6. Addressing activities and emissions that cross MPO boundaries: When a regionally significant project that is not exempt is proposed in another MPO's Plan or TIP crosses or is within Madison County's MPA boundaries, the MCCOG will review the project with the ICG to determine appropriate methods for addressing the emissions impact of the project in the Madison County conformity analysis, consistent with EPA's conformity regulations.

VIII. Conflict Resolution

Conflicts between State agencies or between State agencies and the MCCOG that arise during consultation will be resolved as follows:

1. A statement of the nature of the conflict will be prepared by the agency with the conflict and agreed to by the ICG.
2. Staff of the affected agencies will meet in a good faith effort to resolve the conflict in a manner acceptable to all parties.
3. If the staff is unsuccessful, the MPO Executive Directors or their designee, Management within state agencies and all other parties to the conflict shall meet to resolve differences in a manner acceptable to all parties.
4. The agency with the conflict will send a letter of intent to proceed with their conformity decision or policy that is the source of the conflict to IDEM and other ICG members. The 14-day clock (see below) starts upon IDEM's receipt of the letter.
5. Following these steps, IDEM has 14 days to appeal to the Governor after INDOT or the MCCOG has notified IDEM that either party plans to proceed with their conformity decision or policy that is the source of the conflict. If IDEM appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If IDEM does

not appeal to the Governor within 14 days, the MCCOG or INDOT may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the head or staff of the State or local air agency, State department of transportation, State transportation commission or board, or the MCCOG.

IX. Public Consultation Procedures

The MCCOG will follow its adopted public participation procedures when making conformity determinations on the MCCOG transportation plans, and programs. These procedures establish a proactive public participation process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the MCCOG at the beginning of the public comment period and prior to taking formal action on a conformity determination for the TP and TIP, consistent with these requirements and those of 23 CFR 450.316(b). Meetings of the ICG are open to the public. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.95. These agencies shall also provide opportunity for public participation in conformity determinations for projects where otherwise required by law.

The Delaware-Muncie Metropolitan Plan Commission will follow its adopted public participation procedures when making new conformity determinations in the Delaware-Muncie Urbanized Area.

RESOLUTION 9-08

Madison County/Delaware County Transportation Air Quality Conformity Protocol and Procedures

WHEREAS, the Madison County Council of Governments (MCCOG) is the designated Metropolitan Planning Organization (MPO) with the responsibility of providing for the continuing, cooperative and comprehensive transportation planning process for the Metropolitan Planning Area (MPA) in the Anderson/Madison County area, Sections of Salem Township of Delaware County, Sections of Fall Creek Township of Hamilton County and Sections of Green and Vernon Townships of Hancock County; and

WHEREAS, the Delaware-Muncie Metropolitan Plan Commission (DMMPC) is the Metropolitan Planning Organization (MPO) for the Muncie Metropolitan Planning Area pursuant to 23 CFR 450 and 49 CFR 613; and

WHEREAS, the Muncie Metropolitan Planning Area covers ninety-seven and four tenths percent (97.4%) of Delaware County, Indiana; and

WHEREAS, Madison County Council of Governments (MCCOG) is the Metropolitan Planning Organization (MPO) for the Anderson Metropolitan Planning Area pursuant to 23 CFR 450 and 49 CFR 613; and

WHEREAS, the Anderson Metropolitan Planning Area covers approximately two and six tenth (2.6 %) of Delaware County, Indiana; and

WHEREAS, the MCCOG, the DMMPC and the Indiana Department of Environmental Management (IDEM) are collectively responsible for developing and implementing various portions of the federal air quality plans in the Anderson and Muncie Planning Areas within Delaware County, Indiana; and

WHEREAS, prior to adopting or amending the long-range Transportation Plan (TP) and the Transportation Improvement Plan (TIP), the MCCOG and the DMMPC must first determine that these plans and programs conform to the state and federal air quality plan for the Delaware County Air Quality Planning Area (termed the State Implementation Plan (SIP) using procedures established by the United States Environmental Protection Agency (U.S. EPA); and

WHEREAS, the Interagency Consultation Group (IGC) agencies have prepared the protocol for determining transportation air quality conformity in compliance with the Federal Regulation entitled: ***the Interagency Consultation Group Transportation Air Quality Conformity Protocol, (Attachment A)***, which includes certain conformity procedural guidelines relating to transportation plans, programs and projects, and the interagency consultation procedures and the guidance entitled: ***Interagency Consultation Group Conformity Consultation Guidance; (Attachment B)***; and

WHEREAS, the IGC agencies have revised the Protocol to reflect the most recent guidance provided by the U.S. EPA; and

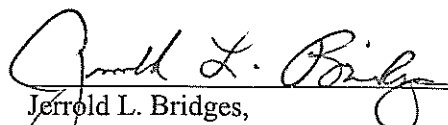
WHEREAS, the adopted Protocol will be submitted to the Indiana Department of Environmental Management (IDEM) for review and subsequent submittal to the United States Environmental Protection Agency (U.S. EPA) for revision of the Indiana State Implementation Plan (SIP).

NOW, THEREFORE, BE IT RESOLVED by the Madison County Council of Governments, as follows:

- Section 1.** That the Madison County Council of Governments shall be the agency responsible for transportation conformity analysis for Madison County, Indiana, and shall make all reasonable and appropriate steps to obtain the information necessary to conduct the analysis in a timely manner as it relates to Transportation Plans and Transportation Improvement Programs.
- Section 2.** That the Delaware-Muncie Metropolitan Plan Commission shall provide the Madison County Council of Governments with all necessary information to the analysis in a timely manner.
- Section 3.** That the Interagency Consultation Group (IGC) agencies have prepared the protocol for determining transportation air quality conformity in compliance with the Federal Regulation entitled: *the Interagency Consultation Group Transportation Air Quality Conformity Protocol, (Attachment A)*, which includes certain conformity procedural guidelines relating to transportation plans, programs and projects, and the interagency consultation procedures and the guidance entitled: *Interagency Consultation Group Conformity Consultation Guidance; (Attachment B)*.
- Section 4.** That the Protocol to be included in the Conformity SIP is approved for submission to IDEM and to the U.S. EPA.
- Section 5.** That the Madison County Council of Governments staff may make minor adjustments, as necessary, to the Protocol in the Conformity SIP in response to IDEM and U.S. EPA comments.
- Section 6.** **APPROVED AND ADOPTED** by the Madison County Council of Governments Policy Committee, this 12th day of June, 2008.



President, Madison County
Council of Governments



Jerrold L. Bridges,
MPO Director

ATTACHMENT A

CENTRAL INDIANA TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL

Conformity Procedures

SUMMARY:

Current federal law does not require that the U.S. Environmental Protection Agency's (EPA) detailed procedures for determining the conformity of plans, programs and projects be included in a "Conformity State Implementation Plan" (SIP). This SIP revision however must include procedures for interagency consultation (Federal, State and local), resolution of conflict and public consultation set forth in 40 CFR 93.105 (consultation procedures are found in Attachment B), and provisions for written commitments for control and mitigation measures required by 40 CFR 93.122(a)(4)(ii) and 125(c) (these commitments are below). This document, when submitted and approved as a SIP revision, gives full legal effect to the following three requirements of the Federal Transportation conformity Rule, 40 CFR 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 to be obtained prior to a conformity determination if the control measures are not included in a Metropolitan Planning Organization'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 must require written commitments to mitigation measures to be obtained prior to a project-level conformity determination, and that project sponsors comply with such commitments. Following EPA approval of this regulation as a revision to the SIP, conformity determinations will be governed by the approved state criteria and procedures as well as any applicable portions of the federal conformity rules that are not addressed by this document.

PROVISIONS FOR Written Commitments Required by 40 CFR 93.122(a)(4)(ii) and 93.125(c):

As set forth in CFR 93.122(a)(4)(ii), emission reduction credit from control measures that are not included in the transportation plan and transportation improvement plan and that do not require a regulatory action in order to be implemented may not be included in the emissions study unless the conformity determination 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 that are not included in the transportation plan and transportation improvement program (TIP) must be obtained prior to a conformity determination and that such commitments must be fulfilled. Consultation on these commitments will 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 MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws, Federal Highway Administration (FHWA), or the Federal Transit Administration (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 Carbon Monoxide (CO), Particulate Matter – 10 microns (PM₁₀), or Fine Particulate Matter – 2.5 microns (PM_{2.5}) 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 conformity determinations for a transportation plan or TIP and 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 will take place as a part of the consultation process prior to the conformity analysis and determination.

CENTRAL INDIANA TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL

Interagency Consultation Procedures

I. Definitions

AQCA - Air Quality Conformity Analysis
CAMPO – Columbus Area Metropolitan Planning Organization
CATS – City of Anderson Transit System
EPA - United States Environmental Protection Agency
FHWA - Federal Highway Administration
FTA - Federal Transit Administration
HPMS - Highway Performance Monitoring System
ICG - Interagency Consultation Group
IDEM - Indiana Department of Environment Management
IMPO – Indianapolis Metropolitan Planning Organization
INDOT- Indiana Department of Transportation
INDYGO – Indianapolis Public Transit Corporation
INSTIP - Indiana Statewide Transportation Improvement Program
MCCOG - Madison County Council of Governments
MPO - Metropolitan Planning Organization
MVEB - Motor Vehicle Emissions Budget
NEPA - National Environmental Policy Act
OTAQ – Office of Transportation and Air Quality, EPA
SIP - State Implementation Plan
TCMs - Transportation Control Measures
TDM - Travel Demand Model
TIP - Transportation Improvement Program
TRAM – Transportation Rural Areas Madison/LifeStream
TP - Transportation Plan
USDOT - United States Department of Transportation
VMT - Vehicle Miles Traveled

II. General

These procedures implement the interagency consultation process as required in 93.105(b) for the portions of the Metropolitan Planning Areas of the Columbus Area Metropolitan Planning Organization (CAMPO), Madison County Council of Governments (MCCOG), and Indianapolis Metropolitan Planning Organization (IMPO), collectively known as the “Metropolitan Planning Organizations” (MPO’s), and include procedures to be undertaken by the MPO’s, Indiana Department of Transportation (INDOT), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Indiana Department of Environmental Management, U.S. Environmental Protection Agency (EPA), local air and transit agencies (where appropriate) and other agencies not listed, before making transportation conformity determinations on the Transportation Plans (TP) and Transportation Improvement Programs (TIP) for each MPO.

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 MPOs with detailed guidance on conformity consultation and procedures but is not legally binding. Only the procedures approved into the State Implementation Plan (SIP) are legally binding.

A. Interagency Consultation Group

To conduct consultation, staff involved in conformity issues for their respective agencies will 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, EPA, FTA
- State Agencies: INDOT, IDEM, other multi-state regional state agencies
- Regional planning agencies: CAMPO, MCCOG, IMPO
- Indianapolis Public Transit Corporation
- City of Anderson Transit System
- TRAM/LifeStream
- Central Indiana Regional Transportation Authority
- Indianapolis Department of Public Works, Division of Environmental Services

IMPO will maintain a directory for the current membership agencies of the ICG. These agencies are responsible to notify ICG upon individual contact changes.

B. Initial Interagency Consultation Group Meeting

IMPO is responsible for initiating the ICG consultation when the TP or TIP is to be updated.

The Initial ICG Meeting (typically a conference call) should include, but not be limited to, all of the agencies listed above. IMPO should schedule conference calls for a time that is acceptable to all other ICG representatives. The ICG agencies should establish the practice of having at least one (1) staff member who can serve as an alternate contact if the primary contact is unavailable. The purpose of the Initial ICG Meeting is to establish consensus regarding the TP update/amendment schedule, latest planning assumptions, and analysis methodology. If there are no changes, the ICG may reaffirm the existing practices. Each respective MPO should provide the ICG with the necessary items as soon as possible prior to the conference call. Each MPO will respond verbally or by email to pertinent questions and comments from the ICG members.

Coordination of planning activities is addressed by the February 2005 (as updated) “Central Indiana Nonattainment Area Transportation Agreement”, on which all three Central Indiana MPO’s are signatories.

The TP will be fiscally responsible and the TIP will be fiscally constrained. The Indiana Statewide Transportation Improvement Plan (INSTIP) will be consistent with the TIPs in order

to comply with the regulations in 23 CFR 450.216(b). The INDOT, CAMPO, MCCOG, and IMPO will reach consensus regarding the list of INDOT-sponsored projects to be included in the MPO TP, project design concept and scope, and the projected year that each project is expected to be open to traffic. INDOT jurisdiction projects are fiscally constrained in the context of the INDOT Statewide Transportation Plan, and thus CAMPO, MCCOG, and IMPO will not add INDOT jurisdiction projects other than those listed in the INDOT Statewide Transportation Plan (TP) without prior concurrence from INDOT or identifying an alternate funding source.

IMPO will prepare initial Meeting Minutes to document agency concurrence regarding items and all decisions made during the initial consultation meeting. IMPO will forward these Meeting Minutes and the Project List to the ICG as soon as reasonably possible. IMPO can follow-up with ICG representatives as needed during the consultation period to clarify outstanding issues. IMPO will schedule a follow-up meeting if needed (i.e. agency concurrence can not be reached). IMPO will 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 conformity determination for the Transportation Plan (TP) and Transportation Improvement Program (TIP). The agency requesting the follow-up meeting will 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 will be open to the public, but not necessitate official public notification.

Meeting frequency will 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 will 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.

III. Consultation for an update or amendment of the Transportation Plan (TP) and/or Transportation Improvement Plan (TIP) when a new regional analysis is required

A. Consultation Structure and Process

TP and/or TIP amendments that require a new regional emission analysis will be developed through the ICG. IMPO is responsible for convening meetings of the ICG.

Early in the TP and/or TIP development process, IMPO will develop a schedule for key activities and meetings leading up to the adoption of the TP and/or TIP. In developing the draft TP and/or TIP, each MPO brings important TP and/or TIP related issues to the ICG for discussion and feedback. Each MPO 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 relevant to interagency consultation, such as the TP and/or TIP schedule(s), important TP and/or TIP related issues, and the draft TP and/or TIP, will also be transmitted to the ICG for discussion and feedback. Similar consultation will occur with TP amendments if a new regional analysis is required. It should be noted that amendments to the TP are few and infrequent.

Public involvement in the development of the TP and/or TIP will be provided in accordance with each respective MPO's adopted public involvement procedures in accordance with 23 CFR 450.

Policy decisions and actions pertaining to the TP and/or TIP are the responsibility of CAMPO, MCCOG, and IMPO and will be made through each MPO's Policy Board/Committee and its standing committee structure. Each MPO will respond to all significant comments for their planning area. Each MPO will transmit the TP and/or TIP related materials to be discussed at the Transportation Policy Board/Committee meeting(s) to the ICG prior to the meeting, or on occasion, may distribute materials at the meetings. Staff and policy board members of the ICG agencies are also invited to attend and participate in these meetings.

B. Agency Roles and Responsibilities

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 TP and/or TIP development and review.

Agency	Roles
IMPO	<ul style="list-style-type: none"> • Runs Mobile 6 (or updated version) emissions model in consultation with IDEM (below) • Prepares Conformity Demonstrations for the TP and/or TIP. Responsibilities of the IMPO should be mutually agreed upon by other appropriate ICG parties. • Prepares the AQCA document for nonattainment areas • Provides a final copy of AQCA, RTP and/or TIP packages to review agencies • Maintains and manages conformity process schedule
CAMPO, MCCOG, and IMPO	<ul style="list-style-type: none"> • Runs travel demand model (TDM) for the nonattainment area (or their respective portions of it) (IMPO and MCCOG only) • Updates/amends the RTP and TIP • Manages public review and comment period • Transportation Policy Board makes the conformity determination and adopts the RTP/TIP via formal resolution
INDOT	<ul style="list-style-type: none"> • Submits INDOT expansion projects to MPO's for inclusion in modeling and conformity demonstration in accordance with the established conformity schedule. • Provides traffic count information, HPMS VMT, and other data, as needed, to the MPO's. • Prepares AQCA for rural nonattainment areas (ozone and PM 2.5), as needed • Reviews AQCA and comments within the allotted time
IDEM	<ul style="list-style-type: none"> • Develops motor vehicle emissions budgets (MVEBs) in consultation with all other ICG parties • Creates and develops state implementation plans (SIPs) in consultation with all other ICG parties • Develop SIP emissions factors using the approved emissions model (or delegates responsibility as agreed with other appropriate ICG parties) • Reviews AQCA and comments within the allotted time

Agency	Roles
Indianapolis Department of Public Works	<ul style="list-style-type: none"> • Reviews conformity documentation • Provides technical guidance and advice
Indianapolis Public Transit Corporation, CATS, TRAM	<ul style="list-style-type: none"> • Reviews conformity documentation
FHWA	<ul style="list-style-type: none"> • Coordinates federal review process of the conformity determination • Facilitate additional consultation as necessary if adverse comments are received during consultation • Monitors conformity process schedule • Assists other ICG parties with commitment and follow-up • Provides technical guidance and advice on conformity • Reviews conformity documentation • Issues United States Department of Transportation (USDOT) conformity determination letter
FTA	<ul style="list-style-type: none"> • Reviews conformity documentation • Reviews AQCA and comments within the allotted time
EPA	<ul style="list-style-type: none"> • Promulgates conformity regulations • Approves the SIP and motor vehicle emissions budgets (MVEBs) • Provides technical advice and guidance on conformity • Reviews conformity determination • Reviews final AQCA and submits a recommendation for conformity finding letter

C. Consultation on TP and/or TP Amendment Conformity Analysis

Consultation on the assumptions and approach to the conformity analysis of the TP and/or TP Amendment will occur during the preparation of these documents. As a part of the TP, TP Amendment, and/or TIP development process, each MPO should 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 the most recent travel survey and the need for funding of research and data collection efforts and regional transportation 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).
- Action(s) by each MPO adopting the TP and/or TIP and that a finding of conformity with the SIP is demonstrated.

D. Consultation and Notification Procedures for Conformity Analysis of TIP and TIP Amendments

Consultation on the assumptions and approach to the conformity analysis of the TIP or TIP Amendment will occur during the preparation of the draft TIP or TIP Amendment. When preparing a new TIP, each MPO will consult with the ICG on the same topics listed for the TP (see Section II.c.), as well as the additional topics listed below:

- Identification of exempt projects in the TIP
- Identification of exempt projects which should be treated as non exempt
- Determination of projects which are regionally significant (both FHWA/FTA and non FHWA/FTA funded projects)
- Development of an Interim TIP (in the event of a conformity lapse)

For TIP Amendments, each MPO will consult with the ICG as identified below:

Consultation Required in Situations Requiring a Conformity Determination, Including But Not Limited To:

- Add a regionally significant project to the TIP when it has already been appropriately accounted for in the regional emissions analysis for the TP
- Add a non-regionally significant project to the TIP
- Add non-exempt, regionally significant project that has not been accounted for in the regional emissions analysis
- Change in non-exempt, regionally significant project that is not consistent with the design concept and scope or the conformity analysis years
- Activities that trigger a new conformity analysis and/or determination such as the effective date of adequate or approved motor vehicle emissions budgets (a new conformity determination must be made within 2 years),

The ICG review of the draft conformity analysis will typically begin during the public review period. IMPO will request the FHWA initiate the formal conformity consultation process. This is typically done by e-mail after the MPO has adopted the TP/TIP update or amendment and issued the associated conformity resolution(s). The ICG will respond promptly to the MPO staff with any comments. Members of the public can comment on the draft conformity analysis in writing or in person at each MPO's meetings prior to the close of the 30-day public review period.

The following process provides for final documents to be provided to all ICG members as required by 93.105(c)(7):

After the MPO Board approves the final conformity analysis, IMPO will provide the final conformity analysis and documentation to FHWA and the ICG for a federal conformity finding determination. FHWA will initiate formal consultation and will provide 30 days for written comments from the ICG members. If appropriate, FHWA will issue the formal conformity finding on behalf of USDOT. The TP update or amendment becomes effective the date the USDOT conformity finding is issued. The TIP update or amendment only becomes effective after the USDOT conformity finding is issued, and the FHWA approves the associated TIP update or amendment into the INSTIP. IMPO will transmit electronic copies of the final conformity analysis to the ICG members and each MPO will place a final copy on its respective web site.

E. Limited Consultation Required

TP/TIP amendments/updates that only involve exempt projects will be handled in an expedited fashion. Each MPO will forward the project list to the ICG and request that any comments be submitted back to them within 1-week if there are questions regarding the exempt status of any projects. No response from the ICG will be construed as agency concurrence in the finding that the projects are exempt. ICG members who are not available during the 1 week timeframe should appoint a backup to review these proposed amendments or with an out of office message will be given additional time. The AQCA documentation and/or resolution adopting the exempt amendment will specifically state that the list of exempt projects was circulated to the ICG and there is ICG concurrence that the associated projects are exempt.

Likewise, an ICG Meeting will not be scheduled if a TP/TIP amendment or update does not require a new regional emissions analysis. Each MPO will forward the project list to the ICG, identify which projects are exempt, non-exempt, and/or not regionally significant, confirm 1) that each project is consistent with the design concept and scope of the project that was modeled in the most recent conformity demonstration; 2) that the open-to-traffic date of each project is consistent with the associated analysis scenario in the most recent regional emissions analysis; 3) that the previous emissions analysis is consistent with the requirements of 40 CFR 93.118 (including that conformity to all currently applicable budgets is demonstrated) and/or 40 CFR 93.119; and 4) establish a deadline for ICG comments (minimum 2-week comment period) on the conformity demonstration. No response will be construed as agency concurrence. ICG members who are not available during the 1 week timeframe should appoint a backup to review these proposed amendments or with an out of office message will be given additional time. A follow-up meeting may be needed if concurrence of all agencies is not reached. The air quality conformity analysis document and/or conformity finding/resolution will specifically reference ICG consultation and concurrence in the TP/TIP amendment/update conformity demonstration.

This section addresses the requirements of 93.105(c)(1)(v).

IV. State Implementation Plan (SIP) Consultation Process

A. SIP Consultation Structure and 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 will 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 (TCM) for inclusion, when and if appropriate. IDEM will provide and update schedules for SIP development that will be available to all agencies and the public. Public involvement will be in accordance with IDEM's public involvement procedures. Key documents will 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 each MPO to provide the travel activity data used to develop 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 each MPO evaluate potential new measures. The ICG will be convened to discuss possible TCMs for inclusion in the SIP. This SIP and consultation process will 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 will have an opportunity to review and comment on the proposed MVEB.

IDEM will circulate the draft SIP for public review, and all comments will be responded to in writing prior to adoption of the SIP. IDEM will then transmit the adopted submittal, along with the public notice, public hearing transcript and a summary of comments and responses, to the EPA.

V. Monitoring of Transportation Control Measures (TCMs)

The periodic conformity analyses for the TP and TIP will include updates of the implementation of TCMs in the applicable SIP. The ICG may request more frequent updates, as needed.

As a part of the new conformity analysis for a TP or TIP, each MPO will 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, each MPO will also estimate the portion of emission reductions that have been achieved. If there are funding or scheduling issues for a TCM, each MPO will describe the steps being undertaken to overcome these obstacles, including means to ensure that funding agencies are giving these TCM maximum priority. Each MPO may propose substitution of a new TCM for all or a portion of an existing TCM that is experiencing implementation difficulties (see below).

VI. Substitution of TCMs in the SIP

After consultation with the ICG, each MPO may recommend and proceed with the substitution of a new TCM in the SIP to overcome implementation difficulties with an existing TCM(s). The substitution will take place in accordance with MPO's adopted TCM substitution procedures,

which provide for full public involvement. In the event of possible discrepancies between MPO's TCM Substitution Procedures and those in SAFETEA (Public Law 109-59), the provisions of SAFETEA will govern.

VII. Other Interagency Consultation Group Processes and Procedures

Interagency consultation procedures for specific conformity issues are described below:

- A. Defining regionally significant projects (93.105 (c) (1) (ii):** Regionally significant projects are defined as a transportation projects (other than an exempt project) that is on a facility which serves regional transportation needs and would normally be included in the coded network for the regional transportation demand forecast model, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel. Each MPO'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. Each MPO will periodically review with the ICG the types of facilities and projects that are coded in the network but which they recommend should not be classified as regionally significant (and which therefore would not trigger a new regional emissions analysis if amended into the TP/TIP). IMPO will document the decisions of the ICG for future reference. The ICG will 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 will take place prior to the beginning of the conformity modeling analysis.
- B. Determination of significant change in project design concept and scope (93.105 (c) (4) and (5):** Project sponsors should provide timely notice to their respective MPO of any change in the design concept or scope of any regionally significant project in the TP and/or TIP. Each MPO will consider a significant change in design concept and scope to be one that would alter the coding of the project in the transportation network associated with the regional travel model. When a project(s) have a change in design concept and scope from that assumed in the most recent conformed TP and/or TIP, the pertinent MPO will consider revisions to the TP and/or TIP if such a revision requires a new regional emissions analysis for the entire TP and/or TIP. Each MPO will evaluate projects that may be considered to have a change in design concept and scope and will consult with the ICG prior to advising the project sponsor as to how any request to amend the TP and/or TIP will proceed. Project sponsors should also provide timely notice to their MPO of any proposed regionally significant projects which should be included in TP/TIP updates prior to the beginning of the conformity analysis and must work with the MPO to provide for the design concept and scope of projects in sufficient detail to allow the MPO to perform the regional emissions analysis.
- C. Determining if exempt projects should be treated as non-exempt (93.105 (c) (iii):** Each MPO will identify all projects in the TP/TIP that meet the definition of an exempt project, as defined in the Conformity regulations. The MPO will provide a list of exempt projects to the ICG for review prior to releasing the draft TP/TIP 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, the pertinent MPO will notify the project sponsor of this determination and make appropriate changes to the conformity analysis, as required.

- D. Treatment of non-FHWA/FTA regionally significant projects 93.105(c)(4) :** Any recipient of federal funding is required to disclose to their pertinent MPO the design concept and scope of regionally significant projects that do not use FHWA or FTA funds. Each MPO will request that INDOT and local agencies identify all such projects prior to conducting a new conformity analysis for the TP and/or TIP. As part of the conformity analysis, IMPO will also include a written response to any significant comment received about whether any project or 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, each MPO will consult with the ICG to identify projects in the TP and/or TIP that may move forward. The MPO will also consult the ICG on the process for preparing an Interim TP and/or TIP.
- F. Addressing activities and emissions that cross MPO boundaries (93.105 (c)(3):** When a regionally significant project that is not exempt is proposed in another MPO's Plan or TIP crosses MPO's boundaries, the MPO's will review the project with the ICG to determine appropriate methods for addressing the emissions impact of the project in MPO's conformity analysis, consistent with EPA's conformity regulations.

VIII. Conflict Resolution (93.105 (d))

Conflicts between State agencies or between State agencies and the MPO's that arise during consultation will be resolved as follows:

- A.** A statement of the nature of the conflict will be prepared by the agency with the conflict and agreed to by the ICG.
- B.** Staff of the affected ICG agencies will meet in a good faith effort to resolve the conflict in a manner acceptable to all parties.
- C.** If the staff is unsuccessful, the MPO Executive Directors or their designee, Management within state agencies and all other parties to the conflict shall meet to resolve differences in a manner acceptable to all parties.
- D.** The parties to the conflict will determine when the 14-day clock (see below) starts. ***OTAQ suggests that we may want to determine what starts the clock before a conflict arises.***
- E.** Following these steps, IDEM has 14 days to appeal to the Governor after INDOT or the pertinent MPO has notified IDEM that either party plans to proceed with their conformity decision or policy that is the source of the conflict. If IDEM appeals to the Governor, the

final conformity determination must have the concurrence of the Governor. If IDEM does not appeal to the Governor within 14 days, the MPO or INDOT may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the head or staff of the State or local air agency, State department of transportation, State transportation commission or board, or any MPO.

IX. Public Consultation Procedures (93.105 (e))

Each MPO will follow its adopted public involvement procedures, which were developed in accordance with the requirements for public involvement in 23 CFR 450, when making conformity determinations on transportation plans, and programs. These procedures establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by each MPO at the beginning of the public comment period and prior to taking formal action on a conformity determination for the TP and TIP, consistent with these requirements and those of 23 CFR 450.316(a). Meetings of the ICG are open to the public. Any charges imposed for public inspection and copying are consistent with the fee schedule contained in 49 CFR 7.43. The ICG agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

RESOLUTION 12-08

Central Indiana MPOs Specific Transportation Air Quality Conformity Protocol and Procedures

WHEREAS, the Madison County Council of Governments is the Metropolitan Planning Organization, hereafter referred to as the MCCOG, designated by the Governor of Indiana, with the responsibility of providing a continuous, cooperative and comprehensive transportation planning process for the Metropolitan Planning Area (MPA) in the Anderson/Madison County area (including all of Madison County and parts of Delaware, Hamilton, and Hancock Counties), hereafter collectively referred to as the MPA pursuant to 23 CFR 450 and 49 CFR 613; and

WHEREAS, the MCCOG, the Columbus Area Metropolitan Planning Organization (CAMPO), the Indianapolis Metropolitan Planning Organization (IMPO), the Indiana Department of Transportation (INDOT), and the Indiana Department of Environmental Management (IDEM) are collectively responsible for developing and implementing various portions of the federal air quality plans in the Indianapolis Metropolitan Planning Area; and

WHEREAS, prior to adopting or amending the long-range Regional Transportation Plan (RTP) and Transportation Improvement Plan (TIP), MCCOG, CAMPO, IMPO, INDOT, and IDEM must first determine that these plans and programs conform to the state and federal air quality plan for the Central Indiana Air Quality Nonattainment Area (termed the State Implementation Plan, or SIP) using procedures established by the Environmental Protection Agency (EPA); and

WHEREAS, the five agencies have prepared a protocol for determining transportation air quality conformity in compliance with Federal regulation entitled: "Transportation Air Quality Conformity Protocol" ("the Protocol"), which includes certain conformity procedures relating to transportation plans, programs, and projects and the interagency consultation procedures, attached hereto as Attachment A and Attachment B, respectively, and incorporated herein as though set forth at length; and

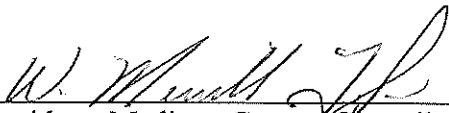
WHEREAS, the five agencies have revised the Protocol to reflect the most recent guidance provided by the U.S. EPA; and

WHEREAS, the Protocol must be submitted to the Indiana Department of Environmental Management (IDEM) for review and subsequent submittal to the United States Environmental Protection Agency (U.S. EPA) for revision of the Central Indiana State Implementation Plan (SIP);

NOW, THEREFORE, BE IT RESOLVED, by the Madison County Council of Governments as follows:

- Section 1. That the Indianapolis Metropolitan Planning Organization shall be the agency responsible for transportation conformity analysis for the Central Indiana air quality nonattainment areas, and shall make all reasonable and appropriate steps to obtain the information necessary to conduct the analysis in a timely manner as it relates to Transportation Plans and Transportation Improvement Programs.
- Section 2. That the Madison County Council of Governments, the Columbus Area Metropolitan Planning Organization, and the Indiana Department of Transportation shall provide the Indianapolis Metropolitan Planning Organization with all necessary information to the analysis in a timely manner.
- Section 3. That the Interagency Consultation Group agencies have prepared the protocol for determining transportation air quality conformity in compliance with the Federal Regulations entitled: ***Central Indiana Transportation Air Quality Conformity Protocol*** (Attachment A), which includes certain conformity procedural guidelines relating to transportation plans, programs and projects.
- Section 4. That the Protocol to be included in the Conformity State Implementation Plan is approved for submission to the Indiana Department of Environmental Management (IDEM) and the United States Environmental Protection Agency (EPA).
- Section 5. That the Madison County Council of Governments, the Columbus Area Metropolitan Planning Organization, and the Indianapolis Metropolitan Planning Organization staffs may make minor adjustments, as necessary, to the Protocol in the Conformity State Implementation Plan in response to IDEM and EPA comments.

APPROVED AND ADOPTED by the Madison County Council of Governments Policy Committee, the 7th day of August, 2008.



President, Madison County Council of Governments



Jerrold L. Bridges, MCCOG
Executive Director

ABSTRACT

Resolution

This resolution approves the “Northeastern Indiana Regional Coordinating Council Transportation Air Quality Conformity Protocol,” listed as Attachment A (conformity procedures) and Attachment B (interagency consultation procedures), for determining the conformity of the Regional Transportation Plan and Transportation Improvement Program with state and federal air quality plans and procedures. These two attachments constitute the “Conformity SIP” (the conformity portion of the state and federal air quality plan, called the State Implementation Plan) for Allen County, including the Fort Wayne/New Haven/Allen County Metropolitan Planning Area (portion within Allen County).

This Resolution will be submitted to the Indiana Department of Environmental Management (IDEM) and the U.S. Environmental Protection Agency (EPA) for approval as revisions to the Indiana State Implementation Plan (SIP), which governs transportation conformity and decisions in Allen County, including the Fort Wayne/New Haven/Allen County Metropolitan Planning Area (portion within Allen County).

Re: Approval of MPO Specific Transportation Air Quality
Conformity Protocol

MPO: Northeastern Indiana Regional Coordinating Council

RESOLUTION

WHEREAS, the MPO: Northeastern Indiana Regional Coordinating Council is the regional transportation agency for Allen County, including the Fort Wayne/New Haven/Allen County Metropolitan Planning Area (portion within Allen County) pursuant to 23 CFR 450 and 49 CFR 613; and

WHEREAS, the Northeastern Indiana Regional Coordinating Council and Indiana Department of Environmental Management are collectively responsible for developing and implementing various portions of the federal air quality plans in Allen County, including the Fort Wayne/New Haven/Allen County Metropolitan Planning Area (portion within Allen County); and

WHEREAS, prior to adopting or amending the long-range Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP), the Northeastern Indiana Regional Coordinating Council must first determine that these plans and programs conform to the state and federal air quality plan for Allen County, including the Fort Wayne/New Haven/Allen County Metropolitan Planning Area (portion within Allen County) (termed the State Implementation Plan, or SIP) using procedures established by the U.S. Environmental Protection Agency (EPA); and

WHEREAS, the five agencies have prepared a protocol for determining transportation air quality conformity in compliance with Federal regulation entitled: Northeastern Indiana Regional Coordinating Council Transportation Air Quality Conformity Protocol ("the Protocol"), which includes certain conformity procedures relating to transportation plans, programs, and projects and the interagency consultation procedures, attached hereto as Attachment A and Attachment B, respectively, and incorporated herein as though set forth at length; and

WHEREAS, the five agencies have revised the Protocol to reflect the most recent guidance provided by the U.S. EPA; and

WHEREAS, Federal regulations for amending the SIP require a public hearing prior to adoption or changes to the Protocol, and the Indiana Department of Environmental Management will hold a public hearing on the Protocol as proposed herein; and

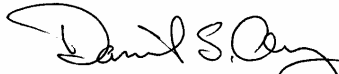
WHEREAS, the Protocol must be submitted to the Indiana Department of Environmental Management (IDEM) for review and subsequent submittal to the U.S. EPA for revision of the Indiana Conformity SIP;

BE IT, THEREFORE, RESOLVED, that the Protocol to be included in the Conformity SIP are approved for submission to IDEM and to U.S. EPA; and, be it further

RESOLVED, that the Northeastern Indiana Regional Coordinating Council staff may make minor adjustments, as necessary, to the Protocol in the Conformity SIP in response to public comment received by IDEM and U.S. EPA, and be it further

RESOLVED, that the Urban Transportation Advisory Board at its regular meeting on February 5, 2008 and the Northeastern Indiana Regional Coordinating Council at its regular meeting on March 12, 2007 approved the MPO Specific Transportation Air Quality Conformity Protocol and agree to follow the protocol.

Northeastern Indiana Regional Coordinating Council

A handwritten signature in black ink, appearing to read "Daniel S. Avery", is written over a horizontal line.

Daniel S. Avery, Executive Director

March 17, 2008

Date

Attachment A

Referred by:

Approval of MPO Specific Transportation Air Quality Conformity Protocol

MPO: Northeastern Indiana Regional Coordinating Council

Resolution

Date: March 12, 2008

Page 1 of 2

NORTHEASTERN INDIANA REGIONAL COORDINATING COUNCIL TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL

Conformity Procedures

SUMMARY:

Current federal law does not require that EPA's detailed procedures for determining the conformity of plans, programs and projects be included in a "Conformity SIP". This SIP revision however must include procedures for interagency consultation (Federal, State and local), resolution of conflict and public consultation set forth in 40 CFR 93.105 (consultation procedures are found in Attachment B), and provisions for written commitments for control and mitigation measures required by 40 CFR 93.122(a)(4)(ii) and 125(c) (these commitments are below). This document, when submitted and approved as a SIP revision, gives full legal effect to the following three requirements of the Federal Transportation conformity Rule, 40 CFR 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 to be obtained prior to a conformity determination if the control measures are not included in a Metropolitan Planning Organization'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 must require written commitments to mitigation measures to be obtained prior to a project-level conformity determination, and that project sponsors comply with such commitments. Following EPA approval of this regulation as a revision to the SIP, conformity determinations will be governed by the approved state criteria and procedures as well as any applicable portions of the federal conformity rules that are not addressed by this document.

PROVISIONS FOR Written Commitments Required by 40 CFR 93.122(a)(4)(ii) and 93.125(c):

As set forth in CFR 93.122(a)(4)(ii), emission reduction credit from control measures that are not included in the transportation plan and transportation improvement plan and that do not require a regulatory action in order to be implemented may not be included in the emissions study unless the conformity determination 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 that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and that such commitments must be fulfilled. Consultation on these commitments will 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 MPO, other 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, PM₁₀, or PM_{2.5} 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 conformity determinations for a transportation plan or TIP and 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 will take place as a part of the consultation process prior to the conformity analysis and determination.

Attachment B

Referred by:

Approval of MPO Specific Transportation Air Quality Conformity Protocol

MPO: Northeastern Indiana Regional Coordinating Council

Resolution

Date: March 12, 2008

NORTHEASTERN INDIANA REGIONAL COORDINATING COUNCIL TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL

Interagency Consultation Procedures

I. Definitions

AQCA - Air Quality Conformity Analysis
FHWA - Federal Highway Administration
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
MPO - Metropolitan Planning Organization
MVEB - Motor Vehicle Emissions Budget
NEPA - National Environmental Policy Act
SIP - State Implementation Plan
TCMs - Transportation Control Measures
TDM - Travel Demand Model
TIP - Transportation Improvement Program
TP - Transportation Plan
USDOT - United States Department of Transportation
EPA - United States Environmental Protection Agency
VMT - Vehicle Miles Traveled

II. General

These procedures implement the interagency consultation process as required in 93.105(b) for Allen County, including the Fort Wayne/New Haven/Allen County Metropolitan Planning Area (portion within Allen County), and include procedures to be undertaken by the MPO, Indiana Department of Transportation (INDOT), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Indiana Department of Environmental Management, EPA, local air and transit agencies (where appropriate) and other agencies not listed, before making transportation conformity determinations on the Transportation Plan (TP) and Transportation Improvement Program (TIP).

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 MPOs with detailed guidance on conformity

consultation and procedures but is not legally binding. Only the procedures approved into the State Implementation Plan (SIP) are legally binding.

Interagency Consultation Group

To conduct consultation, staff involved in conformity issues for their respective agencies will 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, EPA, FTA
- State Agencies: INDOT, IDEM, other multi-state regional state agencies
- Regional planning agency: Northeastern Indiana Regional Coordinating Council
- Local transit agency: Fort Wayne Public Transportation Corporation (Citilink)

The Northeastern Indiana Regional Coordinating Council will maintain a directory for the current membership agencies of the ICG. These agencies are responsible to notify ICG upon individual contact changes.

Initial Interagency Consultation Group Meeting

The Northeastern Indiana Regional Coordinating Council is responsible for initiating the ICG consultation when the TP or TIP is to be updated.

The Initial ICG Meeting (typically a conference call) should include, but not be limited to, all of the agencies listed above. The Northeastern Indiana Regional Coordinating Council should schedule conference calls for a time that is acceptable to all other ICG representatives. The ICG agencies should establish the practice of having at least 1 staff member who can serve as an alternate contact if the primary contact is unavailable. The purpose of the Initial ICG Meeting is to establish consensus regarding the TP update/amendment schedule, latest planning assumptions, and analysis methodology. If there are no changes, the ICG may reaffirm the existing practices. The Northeastern Indiana Regional Coordinating Council should provide the ICG with the necessary items as soon as possible prior to the conference call. The Northeastern Indiana Regional Coordinating Council will respond verbally or by email to all questions and comments from the ICG members.

For transportation activities which cross the borders of the Northeastern Indiana Regional Coordinating Council Planning Area or nonattainment areas, or where a nonattainment area involves a donut area and/or multiple MPOs, the conformity test methodology will clearly delineate agency responsibilities for modeling, assembly of the air quality conformity analysis document, public involvement, and how the respective conformity finding(s) will be issued. The Northeastern Indiana Regional Coordinating Council will conduct the conformity analysis for the entire County of Allen, the designated nonattainment/maintenance area. The NIRCC Metropolitan Planning Area does not cover the entire county, creating a donut area. NIRCC has agreed to perform the necessary air quality analyses for mobile emissions for both the MPA and donut area. NIRCC utilizes a standard travel demand modeling process for estimating Vehicle Miles of Travel (VMT) for the Metropolitan Planning Area and factor VMT growth in the donut area.

The TP will be fiscally responsible and the TIP will be fiscally constrained. The Indiana Statewide Transportation Improvement Plan (INSTIP) will be consistent with the TIPs in order to comply with the regulations in 23 CFR 450.216(b). The INDOT and Northeastern Indiana Regional Coordinating Council will reach consensus regarding the list of INDOT-sponsored projects to be included in the MPO TP, project design concept and scope, and the projected year that each project is expected to be open to traffic. INDOT jurisdiction projects are fiscally constrained in the context of the INDOT Statewide Transportation Plan, and thus the Northeastern Indiana Regional Coordinating Council will not add INDOT jurisdiction projects other than those listed in the INDOT Statewide Transportation Plan (TP) without prior concurrence from INDOT or identifying an alternate funding source.

The Northeastern Indiana Regional Coordinating Council will prepare initial Meeting Minutes to document agency concurrence regarding items and all decisions made during the initial consultation meeting. The Northeastern Indiana Regional Coordinating Council will forward these Meeting Minutes and the Project List to the ICG as soon as reasonably possible. The Northeastern Indiana Regional Coordinating Council: can follow-up with ICG representatives as needed during the consultation period to clarify outstanding issues. The Northeastern Indiana Regional Coordinating Council will schedule a follow-up meeting if needed (i.e. agency concurrence can not be reached). The Northeastern Indiana Regional Coordinating Council will 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 conformity determination for the Transportation Plan (TP) and Transportation Improvement Program (TIP). The agency requesting the follow-up meeting will 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 will be open to the public, but not necessitate official public notification.

Meeting frequency will 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 will 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.

III. Consultation for an update or amendment of the Transportation Plan (TP) and/or Transportation Improvement Plan (TIP) when a new regional analysis is required

a. Consultation Structure and Process

TP and/or TIP amendments that require a new regional emission analysis will be developed through the ICG. The Northeastern Indiana Regional Coordinating Council is responsible for convening meetings of the ICG.

Early in the TP and/or TIP development process, the Northeastern Indiana Regional Coordinating Council will develop a schedule for key activities and meetings leading up to the adoption of the TP and/or TIP. In developing the draft TP and/or TIP, the Northeastern Indiana Regional Coordinating Council brings important TP and/or TIP related issues to the ICG for discussion and feedback. The Northeastern Indiana Regional Coordinating Council 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, such as the TP and/or TIP schedule(s), important TP and/or TIP related issues, and the draft TP and/or TIP, will also be transmitted to the ICG for discussion and feedback. Similar consultation will occur with TP amendments if a new regional analysis is required. It should be noted that amendments to the TP are few and infrequent.

Public involvement in the development of the TP and/or TIP will be provided in accordance with the Northeastern Indiana Regional Coordinating Council's adopted public involvement procedures in accordance with 23 CFR 450.

Policy decisions and actions pertaining to the TP and/or TIP are the responsibility of the Northeastern Indiana Regional Coordinating Council and will be made through the Northeastern Indiana Regional Coordinating Council's and its standing committee structure. The Northeastern Indiana Regional Coordinating Council staff will respond to all significant comments. The Northeastern Indiana Regional Coordinating Council will transmit the TP and/or TIP related materials to be discussed at the Transportation Policy Board/Committee meeting(s) to the ICG prior to the meeting, or on occasion, may distribute materials at the meetings. Staff and policy board members of the ICG agencies are also invited to attend and participate in these meetings.

b. Agency Roles and Responsibilities

93.105 (b)(2)(i) requires roles and responsibilities to be addressed as part of the consultation SIP. As such, the following are the expected participation of key agencies in TP and/or TIP development and review.

Agency	Roles
Northeastern Indiana Regional Coordinating Council	<ul style="list-style-type: none"> • Runs travel demand model (TDM) • Updates/amends the RTP and TIP • Prepares Conformity Demonstrations for the RTP and/or TIP. Responsibilities of the MPO should be mutually agreed upon by the MPO in consultation with other appropriate ICG parties. • Prepares the AQCA document for nonattainment areas in the MPO planning area • Manages public review and comment period • Transportation Policy Board makes the conformity determination and adopts the RTP/TIP via formal resolution • Provides a final copy of AQCA, RTP and/or TIP packages to review agencies • Maintains and manages conformity process schedule
INDOT	<ul style="list-style-type: none"> • Runs Statewide travel demand model for non-MPO areas of the State • Submits INDOT expansion projects to MPO for inclusion in modeling and conformity demonstration in accordance with the established conformity schedule. • Provides traffic count information, HPMS VMT, and other data, as needed, to the MPO. • Prepares AQCA for rural nonattainment areas (ozone and PM 2.5), as needed • Reviews AQCA and comments within the allotted time

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

c. Consultation on TP and/or TP Amendment Conformity Analysis

Consultation on the assumptions and approach to the conformity analysis of the TP and/or TP Amendment will occur during the preparation of these documents. As a part of the TP, TP Amendment, and/or TIP development process, the Northeastern Indiana Regional Coordinating Council should 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 the most recent travel survey and the need for funding of research and data collection efforts and regional transportation 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).

- Action(s) by the Northeastern Indiana Regional Coordinating Council adopting the TP and/or TIP and that a finding of conformity with the SIP is demonstrated.

d. Consultation and Notification Procedures for Conformity Analysis of TIP and TIP Amendments

Consultation on the assumptions and approach to the conformity analysis of the TIP or TIP Amendment will occur during the preparation of the draft TIP or TIP Amendment. When preparing a new TIP, the Northeastern Indiana Regional Coordinating Council will consult with the ICG on the same topics listed for the TP (see Section II.c.), as well as the additional topics listed below:

- Identification of exempt projects in the TIP
- Identification of exempt projects which should be treated as non exempt
- Determination of projects which are regionally significant (both FHWA/FTA and non FHWA/FTA funded projects)
- Development of an Interim TIP (in the event of a conformity lapse)

For TIP Amendments, the Northeastern Indiana Regional Coordinating Council will consult with the ICG as identified below. Consultation is required in situations requiring a conformity determination including but not limited to:

- Add a regionally significant project to the TIP when it has already been appropriately accounted for in the regional emissions analysis for the TP;
- Add a non-regionally significant project to the TIP;
- Add non-exempt, regionally significant project that has not been accounted for in the regional emissions analysis;
- Change in non-exempt, regionally significant project that is not consistent with the design concept and scope or the conformity analysis years;
- Activities that trigger a new conformity analysis and/or determination such as the effective date of adequate or approved motor vehicle emissions budgets (a new conformity determination must be made within 2 years).

The ICG review of the draft conformity analysis will typically begin during the public review period. The Northeastern Indiana Regional Coordinating Council will request the FHWA initiate the formal conformity consultation process. This is typically done by e-mail after the MPO has adopted the TP/TIP update or amendment and issued the associated conformity resolution(s). The ICG will respond promptly to the Northeastern Indiana Regional Coordinating Council staff with any comments. Members of the public can comment on the draft conformity analysis in writing or in person at Northeastern Indiana Regional Coordinating Council meetings prior to the close of the 30-day public review period.

The following process provides for final documents to be provided to all ICG members as required by 93.105(c)(7).

After the MPO Board approves the final conformity analysis, the Northeastern Indiana Regional Coordinating Council will provide the final conformity analysis and documentation to FHWA and the ICG for a federal conformity finding determination. FHWA will initiate formal consultation and will provide 30 days for written comments from the ICG members. If appropriate, FHWA will issue the formal conformity finding on behalf of USDOT. The TP

update or amendment becomes effective the date the USDOT conformity finding is issued. The TIP update or amendment only becomes effective after the USDOT conformity finding is issued, and the FHWA approves the associated TIP update or amendment into the INSTIP. The Northeastern Indiana Regional Coordinating Council will transmit electronic copies of the final conformity analysis to the ICG members and place a final copy on the MPO's Web site.

e. Limited Consultation Required

TP/TIP amendments/updates that only involve exempt projects will be handled in an expedited fashion. The Northeastern Indiana Regional Coordinating Council will forward the project list to the ICG and request that any comments be submitted within 1-week if there are questions regarding the exempt status of any projects. No response from the ICG will be construed as agency concurrence in the finding that the projects are exempt. ICG members who are not available during the 1-week timeframe should appoint a backup to review these proposed amendments. The AQCA documentation and/or resolution adopting the exempt amendment will specifically state that the list of exempt projects was circulated to the ICG and there is ICG concurrence that the associated projects are exempt.

Likewise, an ICG Meeting will not be scheduled if a TP/TIP amendment or update does not require a new regional emissions analysis. The Northeastern Indiana Regional Coordinating Council will forward the project list to the ICG, identify which projects are exempt, non-exempt, and/or not regionally significant, confirm that each project is consistent with the design concept and scope of the project that was modeled in the most recent conformity demonstration, affirm that the open-to-traffic date of each project is consistent with the associated analysis scenario in the most recent regional emissions analysis, confirm that the previous emissions analysis is consistent with the requirements of 40 CFR 93.118 (including that conformity to all currently applicable budgets is demonstrated) and/or 40 CFR 93.119, and establish a deadline for ICG comments (minimum 2-week comment period) on the conformity demonstration. No response will be construed as agency concurrence. ICG members who are not available during the 2-week timeframe should appoint a backup to review these proposed amendments. A follow-up meeting may be needed if concurrence of all agencies is not reached. The air quality conformity analysis document and/or conformity finding/resolution will specifically reference ICG consultation and concurrence in the TP/TIP amendment/update conformity demonstration.

This section addresses the requirements of 93.105(c)(1)(v).

IV. State Implementation Plan (SIP) Consultation Process

a. SIP Consultation Structure and 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 will 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 (TCM) for inclusion, when and if appropriate. IDEM will provide and update schedules for SIP development that will be available to all agencies and the public. Public involvement will be in accordance with IDEM's public involvement procedures. Key documents will 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 the Northeastern Indiana Regional Coordinating Council to provide the travel activity data used to develop 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 the Northeastern Indiana Regional Coordinating Council evaluate potential new measures. The ICG will be convened to discuss possible TCMs for inclusion in the SIP. This SIP and consultation process will 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 will have an opportunity to review and comment on the proposed MVEB.

IDEM will circulate the draft SIP for public review, and all comments will be responded to in writing prior to adoption of the SIP. IDEM will then transmit the adopted submittal, along with the public notice, public hearing transcript and a summary of comments and responses, to the EPA.

V. Monitoring of Transportation Control Measures (TCMs)

The periodic conformity analyses for the TP and TIP will include updates of the implementation of TCMs in the applicable SIP. The ICG may request more frequent updates, as needed.

As a part of the new conformity analysis for a TP or TIP, the Northeastern Indiana Regional Coordinating Council will 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, the Northeastern Indiana Regional Coordinating Council will also estimate the portion of emission reductions that have been achieved. If there are funding or scheduling issues for a TCM, the Northeastern Indiana Regional Coordinating Council will describe the steps being undertaken to overcome these obstacles, including means to ensure that funding agencies are giving these TCM maximum priority. The Northeastern Indiana Regional Coordinating Council may propose substitution of a new TCM for all or a portion of an existing TCM that is experiencing implementation difficulties (see below).

VI. Substitution of TCMs in the SIP

After consultation with the ICG, the Northeastern Indiana Regional Coordinating Council may recommend and proceed with the substitution of a new TCM in the SIP to overcome implementation difficulties with an existing TCM(s). The substitution will take place in accordance with MPO's adopted TCM substitution procedures, which provide for full public involvement. In the event of possible discrepancies between MPO's TCM Substitution Procedures and those in SAFETEA (Public Law 109-59), the provisions of SAFETEA will govern.

VII. Other Interagency Consultation Group Processes and Procedures

Interagency consultation procedures for specific conformity issues are described below.

a. Defining regionally significant projects (93.105 (c) (1) (ii))

Regionally significant projects are defined as a transportation projects (other than an exempt project) that is on a facility which serves regional transportation needs and would normally be included in the coded network for the regional transportation demand forecast model, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel. The MPO'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. The MPO will periodically review with the ICG the types of facilities and projects that are coded in the network but which the Northeastern Indiana Regional Coordinating Council recommends should not be classified as regionally significant (and which therefore would not trigger a new regional emissions analysis if amended into the TP/TIP). The Northeastern Indiana Regional Coordinating Council will document the decisions of the ICG for future reference. The ICG will 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 will take place prior to the beginning of the conformity modeling analysis.

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

Project sponsors should provide timely notice to the Northeastern Indiana Regional Coordinating Council of any change in the design concept or scope of any regionally significant project in the TP and/or TIP. The Northeastern Indiana Regional Coordinating Council will consider a significant change in design concept and scope to be one that would alter the coding of the project in the transportation network associated with the regional travel model. When a project(s) has a change in design concept and scope from that assumed in the most recent conformed TP and/or TIP, the Northeastern Indiana Regional Coordinating Council will consider revisions to the TP and/or TIP if such a revision requires a new regional emissions analysis for the entire TP and/or TIP. The Northeastern Indiana Regional Coordinating Council will evaluate projects that may be considered to have a change in design concept and scope and will consult with the ICG prior to advising the project sponsor as to how the Northeastern Indiana Regional Coordinating Council intends to proceed with any request to amend the TP and/or TIP. Project sponsors should also provide timely notice to the Northeastern Indiana Regional Coordinating Council of any proposed regionally significant projects which should be included in TP/TIP updates prior to the beginning of the conformity analysis and must work with the MPO to provide for the design concept and scope of projects in sufficient detail to allow the MPO to perform the regional emissions analysis.

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

The Northeastern Indiana Regional Coordinating Council will identify all projects in the TP/TIP that meet the definition of an exempt project, as defined in the Conformity regulations. The Northeastern Indiana Regional Coordinating Council will provide a list of exempt projects to the ICG for review prior to releasing the draft TP/TIP 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, the Northeastern

Indiana Regional Coordinating Council will notify the project sponsor of this determination and make appropriate changes to the conformity analysis, as required.

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

Any recipient of federal funding is required to disclose to the Northeastern Indiana Regional Coordinating Council the design concept and scope of regionally significant projects that do not use FHWA or FTA funds. The Northeastern Indiana Regional Coordinating Council will request that INDOT and local agencies identify all such projects prior to conducting a new conformity analysis for the TP and/or TIP. As part of the conformity analysis, the Northeastern Indiana Regional Coordinating Council will also include a written response to any significant comment received about whether any project or 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, the Northeastern Indiana Regional Coordinating Council will consult with the ICG to identify projects in the TP and/or TIP that may move forward. The Northeastern Indiana Regional Coordinating Council will also consult the ICG on the process for preparing an Interim TP and/or TIP.

f. Addressing activities and emissions that cross MPO boundaries (93.105 (c)(3)

When a regionally significant project that is not exempt is proposed in another MPO's Plan or TIP crosses MPO's boundaries, the Northeastern Indiana Regional Coordinating Council will review the project with the ICG to determine appropriate methods for addressing the emissions impact of the project in MPO's conformity analysis, consistent with EPA's conformity regulations.

VIII. Conflict Resolution (93.105 (d))

Conflicts between State agencies or between State agencies and the Northeastern Indiana Regional Coordinating Council that arise during consultation will be resolved as follows.

1. A statement of the nature of the conflict will be prepared by the agency with the conflict and agreed to by the ICG.
2. Staff of the affected ICG agencies will meet in a good faith effort to resolve the conflict in a manner acceptable to all parties.
3. If the staff is unsuccessful, the MPO Executive Directors or their designee, Management within state agencies and all other parties to the conflict shall meet to resolve differences in a manner acceptable to all parties.
4. A fourteen day appeal period will commence on the first normal business day following IDEM's receipt of correspondence (via Certified US Mail or other certified delivery) from INDOT or the Northeastern Indiana Regional Coordinating Council that they plan to proceed with their conformity decision or policy in conflict. The appeal period will expire at midnight of the fourteenth calendar day following IDEM's receipt of such notice.

5. Following these steps, IDEM has 14 days to appeal to the Governor after INDOT or the Northeastern Indiana Regional Coordinating Council has notified IDEM that either party plans to proceed with their conformity decision or policy that is the source of the conflict. If IDEM appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If IDEM does not appeal to the Governor within 14 days, the Northeastern Indiana Regional Coordinating Council or INDOT may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the head or staff of the State or local air agency, State department of transportation, State transportation commission or board, or the Northeastern Indiana Regional Coordinating Council.

IX. Public Consultation Procedures (93.105 (e))

The Northeastern Indiana Regional Coordinating Council will follow its adopted public involvement procedures, which were developed in accordance with the requirements for public involvement in 23 CFR 450, when making conformity determinations on transportation plans, and programs. These procedures establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the Northeastern Indiana Regional Coordinating Council at the beginning of the public comment period and prior to taking formal action on a conformity determination for the TP and TIP, consistent with these requirements and those of 23 CFR 450.316(a). Meetings of the ICG are open to the public. Any charges imposed for public inspection and copying are consistent with the fee schedule contained in 49 CFR 7.43. The ICG agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.



NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION

Together We Make The Difference

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RESOLUTION 08-07

A RESOLUTION OF THE NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION TO ADOPT THE TRANSPORTATION AIR QUALITY PROTOCOL

WHEREAS, the citizens of Northwest Indiana require a safe, efficient, and effective regional transportation system that maintains and enhances regional mobility and contributes to improving the quality of life in the region; and

WHEREAS, the Northwestern Indiana Regional Planning Commission, hereafter referred to as The Commission, being designated as the Metropolitan Planning Organization for the Lake, Porter and La Porte County planning area pursuant to 23 CFR 450 and 49 CFR 613, has established a region-wide, cooperative, comprehensive and continuing planning process to develop the unified planning work program, regional transportation plan and transportation improvement program. The Commission enacts plans and programs to facilitate federal, state and local funding for surface transportation improvements carried out by the Indiana Department of transportation, the region's communities, counties and transit operators, and provides technical assistance and expertise to regional transportation interests; and

WHEREAS, The Commission and the federal and state transportation and environmental agencies are collectively responsible for developing and implementing various portions of the federal air quality plans in the Lake, Porter and La Porte County Planning Area; and

WHEREAS, prior to adopting or amending the Regional Transportation Plan (RTP) and Transportation Improvement Plan (TIP), The Commission must first determine that these plans and programs conform to the state air quality plans for the Lake, Porter and La Porte County Planning Area (termed the State Implementation Plan, or SIP) using procedures established by the Environmental Protection Agency (EPA); and

WHEREAS, the responsible agencies have prepared a protocol for determining transportation air quality conformity in compliance with federal regulation entitled: Northwestern Indiana Regional Planning Commission TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL ("the Protocol"), which includes certain conformity procedures relating to transportation plans, programs, and projects, attached hereto as Attachment A, and the interagency consultation procedures, attached hereto as

Attachment B, and incorporated herein as though set forth at length; and

WHEREAS, the responsible agencies have crafted the Protocol to reflect the most recent guidance provided by the U.S. EPA; and


WHEREAS, Federal regulations for amending the SIP require a public hearing prior to adoption or changes to the Protocol, and the Indiana Department of Environmental Management will hold a public hearing on the protocol as proposed herein; and

WHEREAS, the Protocol must be submitted to the Indiana Department of Environmental Management (IDEM) for review and subsequent submittal to the United States Environmental Protection Agency (U.S. EPA) for revision of the Indiana State Implementation Plan (SIP),


NOW, THEREFORE BE IT RESOLVED, that the Protocol to be included in the Conformity SIP are approved for submission to IDEM and to U.S. EPA; and,

BE IT FURTHER RESOLVED, that the NIRPC staff may make minor adjustments, as necessary, to the Protocol in the Conformity SIP in response to IDEM and U.S. EPA comments.

Duly adopted by the Northwestern Indiana Regional Planning Commission on this seventeenth day of April, two thousand and eight.


Joseph Stahura, Chairman

ATTEST:


Stanley Dobosz, Secretary

ABSTRACT

Resolution No. 08-07

This resolution approves "Northwestern Indiana Regional Planning Commission Transportation Air Quality Conformity Protocol," listed as Attachment A (conformity procedures) and Attachment B (interagency consultation procedures), for determining the conformity of the Regional Transportation Plan and Transportation Improvement Program with state and federal air quality plans and procedures. These two attachments constitute the "Conformity SIP" (the conformity portion of the state and federal air quality plan, called the State Implementation Plan) for the NIRPC Planning Area.

This Resolution will be submitted to the Indiana Department of Environmental Management (IDEM) and the U.S. Environmental Protection Agency (EPA) for approval as revisions to the Indiana State Implementation Plan (SIP), which governs transportation conformity and decisions in the NIRPC Planning Area.

ATTACHMENT A

Northwestern Indiana Regional Planning Commission **TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL**

Conformity Procedures

SUMMARY:

This document, when submitted and approved as a State Implementation Plan revision, gives full legal effect to the following three requirements of the Federal Transportation Conformity Rule, 40 CFR 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 to be obtained prior to a conformity determination if the control measures are not included in a Metropolitan Planning Organization'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 must require written commitments to mitigation measures to be obtained prior to a project-level conformity determination, and that project sponsors comply with such commitments.

This SIP revision includes procedures for interagency consultation (Federal, State and local), resolution of conflict and public consultation set forth in 40 CFR 93.105 (consultation procedures are found in Attachment B), and provisions for written commitments for control and mitigation measures required by 40 CFR 93.122(a)(4)(ii) and 125(c) (these commitments are below). Current federal law does not require that EPA's detailed procedures for determining the conformity of plans, programs and projects be included in a "Conformity SIP". Following EPA approval of this regulation as a revision to the SIP, conformity determinations will be governed by the approved state criteria and procedures as well as any applicable portions of the federal conformity rules that are not addressed by this document.

PROVISIONS FOR Written Commitments Required by 40 CFR 93.122(a)(4)(ii) and 93.125(c):

As set forth in CFR 93.122(a)(4)(ii), emission reduction credit from control measures that are not included in the transportation plan and transportation improvement program and that do not require a regulatory action in order to be implemented may not be included in the emissions study unless the conformity determination 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 that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and such commitments must be fulfilled. Consultation on these commitments will 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 MPO, other 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, PM₁₀, or PM_{2.5} 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 conformity determinations for a transportation plan or TIP and 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 will take place as a part of the consultation process prior to the conformity analysis and determination.

ATTACHMENT B

Northwestern Indiana Regional Planning Commission **TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL**

Interagency Consultation Procedures

I. Definitions

AQCA - Air Quality Conformity Analysis
CMAP - Chicago Metropolitan Agency for Planning
FHWA - Federal Highway Administration
FTA - Federal Transit Administration
HPMS - Highway Performance Monitoring System
ICG - Interagency Consultation Group
IDEM - Indiana Department of Environment Management
IDOT - Illinois Department of Transportation
IEPA - Illinois Environmental Protection Agency
INDOT - Indiana Department of Transportation
INSTIP - Indiana Statewide Transportation Improvement Program
MPO - Metropolitan Planning Organization
MVEB - Motor Vehicle Emissions Budget
NEPA - National Environmental Policy Act
NIRPC - Northwestern Indiana Regional Planning Commission
RTP - Regional Transportation Plan
SIP - State Implementation Plan
TCM - Transportation Control Measure
TDM - Travel Demand Model
TDM - Travel Demand Management
TIP - Transportation Improvement Program
TP - Transportation Plan
TSM - Transportation System Management
USDOT - United States Department of Transportation
EPA - United States Environmental Protection Agency
VMT - Vehicle Miles Traveled

II. General

These procedures implement the interagency consultation process as required in 93.105(b) for the Northwestern Indiana Regional Planning Commission (NIRPC) Planning Area, and include procedures to be undertaken by NIRPC, Indiana Department of Transportation (INDOT), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Indiana Department of Environment Management (IDEM), Environmental Protection Agency (EPA), local air and transit agencies (where appropriate) and other agencies not listed, before making transportation conformity determinations on the Transportation Plan (TP) and Transportation Improvement Program (TIP).

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 MPOs with detailed guidance on conformity consultation and procedures but is not legally binding. Only the procedures approved into the State Implementation Plan (SIP) are legally binding.

Interagency Consultation Group

To conduct consultation, staff involved in conformity issues for their respective agencies will 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, EPA, FTA
- State Agencies: INDOT, IDEM, IDOT, IEPA
- Regional planning agencies: Northwestern Indiana Regional Planning Commission (NIRPC) and Chicago Metropolitan Agency for Planning (CMAP)
- Local transit agencies: East Chicago Transit, Gary Public Transportation Corporation, Hammond Transit System, Northern Indiana Commuter Transportation District, Northwestern Indiana Regional Bus Authority, Northwestern Indiana Community Action
- Local air agencies: City of Gary, City of Hammond
- Other agencies not listed

Local transit agencies and local air agencies are included as interested parties. These agencies are welcome to provide comments and technical input on issues of local interest.

NIRPC will maintain a directory for the current membership agencies of the ICG. These agencies are responsible to notify ICG upon individual contact changes.

Local and State Agency Notification of Project Addition/Deletion and Change

Agencies that are responsible for the implementation of transportation projects must notify NIRPC of additions, deletions and changes of the scope and implementation time frame of each nonexempt transportation project, regardless of funding sources. At the beginning of the update process for each TP and TIP, NIRPC will solicit project information from these agencies. When project changes require an amendment of the TP or TIP, the conformity process will be activated.

Initial Interagency Consultation Group Meeting

NIRPC is responsible for initiating the ICG consultation when the TP and/or TIP are to be updated or amended.

The initial ICG Meeting (typically a conference call) should include, but not be limited to, all of the agencies listed above. NIRPC should schedule conference calls for a time that is acceptable to all other ICG representatives. The ICG agencies should establish the practice of having at least one staff member who can serve as an alternate contact if the primary contact is unavailable. The purpose of the initial ICG Meeting is to establish consensus regarding the TP and/or TIP update/amendment schedule, latest planning assumptions, and analysis methodology. If there are no changes, the ICG may reaffirm the existing practices. NIRPC should provide the ICG with

the necessary items as soon as possible prior to the conference call. NIRPC will respond verbally or by email to all questions and comments from the ICG members.

For transportation activities which cross the borders of the NIRPC Planning Area or nonattainment areas, or where a nonattainment area involves multiple MPOs, the conformity test methodology will clearly delineate agency responsibilities for modeling, assembly of the air quality conformity analysis document, public involvement, and how the respective conformity finding(s) will be issued. The conformity determinations for northwestern Indiana and northeastern Illinois must be completed in a combined manner until the applicable SIPs establish separate state MVEBs for PM_{2.5} and its precursor(s).

The TP will be fiscally responsible and the TIP will be fiscally constrained. The Indiana Statewide Transportation Improvement Program (INSTIP) will be consistent with the TIP in order to comply with the regulations in 23 CFR 450.216(b). The INDOT and NIRPC will reach consensus regarding the list of INDOT-sponsored projects to be included in the NIRPC TP, project design concept and scope, and the projected year that each project is expected to be open to traffic. INDOT jurisdiction projects are fiscally constrained in the context of the INDOT Statewide Transportation Plan, and thus NIRPC will not add INDOT jurisdiction projects other than those listed in the INDOT Statewide Transportation Plan (TP) without prior concurrence from INDOT or identifying an alternate funding source.

NIRPC will prepare initial meeting minutes to document agency concurrence regarding items and all decisions made during the initial consultation meeting. NIRPC will forward these meeting minutes and the project list to the ICG as soon as reasonably possible. NIRPC can follow-up with ICG representatives as needed during the consultation period to clarify outstanding issues. NIRPC will schedule a follow-up meeting if needed (i.e. agency concurrence cannot be reached). NIRPC will 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 conformity determination for the Transportation Plan (TP) and Transportation Improvement Program (TIP). The agency requesting the follow-up meeting will 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 will be open to the public, but not necessitate official public notification.

Meeting frequency will be as needed, unless there is consensus among the ICG agencies to meet on a specific schedule (i.e. quarterly, biannually, annually, etc.). In most cases, consultation will 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.

III. Consultation for an update or amendment of the Transportation Plan (TP) and/or Transportation Improvement Program (TIP) when a new regional analysis is required

a. Consultation Structure and Process

TP and/or TIP amendments that require a new regional emission analysis will be developed through the ICG. NIRPC is responsible for convening meetings of the ICG.

Early in the TP and/or TIP development process, NIRPC will develop a schedule for key activities and meetings leading up to the adoption of the TP and/or TIP. In developing the draft TP and/or TIP, NIRPC brings important TP and/or TIP related issues to the ICG for discussion and feedback. NIRPC 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, such as the TP and/or TIP schedule(s), important TP and/or TIP related issues, and the draft TP and/or TIP, will also be transmitted to the ICG for discussion and feedback. Similar consultation will occur with TP amendments if a new regional analysis is required. It should be noted that amendments to the TP are few and infrequent.

Public participation in the development of the TP and/or TIP will be provided in accordance with NIRPC adopted Public Participation Procedures in accordance with 23 CFR 450.

Policy decisions and actions pertaining to the TP and/or TIP are the responsibility of NIRPC and will be made through the NIRPC Full Commission or Executive Board and its standing committee structure. NIRPC staff will respond to all significant comments. NIRPC will transmit the TP and/or TIP related materials to be discussed at the Transportation Policy Committee meeting(s) to the ICG prior to the meeting, or on occasion, may distribute materials at the meetings. Staff and policy board members of the ICG agencies are also invited to attend and participate in these meetings.

b. Agency Roles and Responsibilities.

93.105 (b)(2)(i) requires roles and responsibilities to be addressed as part of the consultation SIP. As such, the following are the expected participation of key agencies in TP and/or TIP development and review.

Agency	Roles
NIRPC	<ul style="list-style-type: none"> • Runs travel demand model (TDM) • Updates/amends the TP and TIP • Prepares the AQCA document for nonattainment and/or maintenance areas in the MPO planning area • Manages public review and comment period • Commission makes the conformity determination and adopts the TP/TIP via formal resolution • Provides a final copy of AQCA, TP and/or TIP packages to review agencies • Maintains and manages conformity process schedule
INDOT	<ul style="list-style-type: none"> • Submits INDOT expansion projects to NIRPC for inclusion in modeling and conformity demonstration in accordance with the established conformity schedule. • Provides traffic count information, HPMS VMT, and other data, as needed, to NIRPC. • Reviews AQCA and comments within the allotted time

Agency	Roles
IDEM	<ul style="list-style-type: none"> • Creates and develops state implementation plans (SIPs) in consultation with all other ICG parties • Develops motor vehicle emissions budgets (MVEBs) in consultation with all other ICG parties • Develop SIP emissions factor parameters using the approved emissions model (or delegates responsibility as agreed with other appropriate ICG parties) • Reviews AQCA and comments within the allotted time
Local Air Agencies	<ul style="list-style-type: none"> • Reviews conformity documentation • Provides technical guidance and advice
FHWA	<ul style="list-style-type: none"> • Coordinates federal review process of the conformity determination • Facilitate additional consultation as necessary if adverse comments are received during consultation • Monitors MPO conformity process schedule • Assists other ICG parties with commitment follow-up • Provides technical guidance and advice on conformity • Reviews conformity documentation • Issues United States Department of Transportation (USDOT) conformity finding letter
FTA	<ul style="list-style-type: none"> • Reviews conformity documentation • Reviews AQCA and comments within the allotted time
EPA	<ul style="list-style-type: none"> • Promulgates conformity regulations • Approves the SIP and motor vehicle emissions budgets (MVEBs) • Provides technical advice and guidance on conformity • Reviews conformity determination • Reviews final AQCA and submits a recommendation for conformity finding letter

c. Consultation on TP and/or TP Amendment Conformity Analysis

Consultation on the assumptions and approach to the conformity analysis of the TP and/or TP Amendment will occur during the preparation of these documents. As a part of the TP, TP Amendment, and/or TIP development process, NIRPC should 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 the most recent travel survey and the need for funding of research and data collection efforts and regional transportation 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).
- Action(s) by NIRPC adopting the TP and/or TIP and that a finding of conformity with the SIP is demonstrated.

d. Consultation and Notification Procedures for Conformity Analysis of TIP and TIP Amendments

Consultation on the assumptions and approach to the conformity analysis of the TIP or TIP Amendment will occur during the preparation of the draft TIP or TIP Amendment. When preparing a new TIP, NIRPC will consult with the ICG on the same topics listed for the TP (see Section II.c.), as well as the additional topics listed below:

- Identification of exempt projects in the TIP
- Identification of exempt projects which should be treated as non exempt
- Determination of projects which are regionally significant (both FHWA/FTA and non FHWA/FTA funded projects)
- Development of an Interim TIP (in the event of a conformity lapse)

For TIP Amendments, NIRPC will consult with the ICG as identified below:

Consultation Required in Situations Requiring a Conformity Determination, Including But Not Limited To:

- Add a regionally significant project or project phase to the TIP when it has already been appropriately accounted for in the regional emissions analysis for the TP
- Add a non-regionally significant project to the TIP
- Add non-exempt, regionally significant project that has not been accounted for in the regional emissions analysis
- Change in non-exempt, regionally significant project that is not consistent with the design concept and scope or the conformity analysis years
- Activities that trigger a new conformity analysis and/or determination such as the effective date of adequate or approved motor vehicle emissions budgets (a new conformity determination must be made within 2 years),

The ICG review of the draft conformity analysis will typically begin during the public review period. NIRPC will request the FHWA initiate the formal conformity consultation process. This is typically done by e-mail after NIRPC has adopted the TP/TIP update or amendment and issued the associated conformity resolution(s). The ICG will respond promptly to the NIRPC staff with any comments. Members of the public can comment on the draft conformity analysis in writing or in person at NIRPC meetings prior to the close of the 30-day public review period.

The following process provides for final documents to be provided to all ICG members as required by 93.105(c)(7):

After the MPO Board approves the final conformity analysis, NIRPC will provide the final conformity analysis and documentation to FHWA and the ICG for a federal conformity finding. FHWA will initiate formal consultation and will provide 30 days for written comments from the ICG members. If appropriate, FHWA will issue the formal conformity finding on behalf of USDOT. The TP update or amendment becomes effective the date the USDOT conformity finding is issued. The TIP update or amendment only becomes effective after the USDOT conformity finding is issued, and the FHWA approves the associated TIP update or amendment into the INSTIP. NIRPC will transmit electronic copies of the final conformity analysis to the ICG members and place a final copy on NIRPC's Web site.

e. Limited Consultation Required:

TP/TIP amendments/updates that only involve exempt projects will be handled in an expedited fashion. NIRPC will forward the project list to the ICG and request that any comments be submitted back to NIRPC within 1-week if there are questions regarding the exempt status of any projects. No response from the ICG will be construed as agency concurrence in the finding that the projects are exempt. ICG members who are not available during the 1 week timeframe should appoint a backup to review these proposed amendments or with an out of office message will be given additional time. The AQCA documentation and/or resolution adopting the amendment will specifically state that the list of exempt projects was circulated to the ICG and there is ICG concurrence that the associated projects are exempt.

Likewise, an ICG meeting will not be scheduled if a TP/TIP amendment or update does not require a new regional emissions analysis. NIRPC will forward the project list to the ICG, identify which projects are exempt, non-exempt, and/or not regionally significant, confirm that each project that is included in the amendment is consistent with the design concept and scope of the project that was modeled in the most recent conformity demonstration, affirm that the open-to-traffic date of each project is consistent with the associated analysis scenario in the most recent regional emissions analysis, confirm that the previous emissions analysis is consistent with the requirements of 40 CFR 93.118 (including that conformity to all currently applicable budgets is demonstrated) and/or 40 CFR 93.119, and establish a deadline for ICG comments (minimum 2-week comment period) on the conformity determination. No response will be construed as agency concurrence. ICG members who are not available during the 2 week timeframe should appoint a backup to review these proposed amendments or with an out of office message will be given additional time. A follow-up meeting may be needed if concurrence of all agencies is not reached. The air quality conformity analysis document and/or conformity finding/resolution will specifically reference ICG consultation and concurrence in the TP/TIP amendment/update conformity demonstration.

This section addresses the requirements of 93.105(c)(1)(v).

IV. State Implementation Plan (SIP) Consultation Process

a. SIP Consultation Structure and 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 will 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 (TCM) for inclusion, when and if appropriate. IDEM will provide and update schedules for SIP development that will be available to all agencies and the public. Public involvement will be in accordance with IDEM's public involvement procedures. Key documents will 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 NIRPC to provide the travel activity data used to develop 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 NIRPC evaluate potential new measures. The ICG will be convened to discuss possible TCMs for inclusion in the SIP. This SIP and consultation process will 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 will have an opportunity to review and comment on the proposed MVEB.

IDEM will circulate the draft SIP for public review, and all comments will be responded to in writing prior to adoption of the SIP. IDEM will then transmit the adopted submittal, along with the public notice, public hearing transcript and a summary of comments and responses, to the EPA.

V. Monitoring of Transportation Control Measures (TCMs)

The periodic conformity analyses for the TP and TIP will include updates of the implementation of TCMs in the applicable SIP. The ICG may request more frequent updates, as needed.

As a part of the new conformity analysis for a TP or TIP, if applicable, NIRPC will 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, NIRPC will also estimate the portion of emission reductions that have been achieved. If there are funding or scheduling issues for a TCM, NIRPC will describe the steps being undertaken to overcome these obstacles, including means to ensure that funding agencies are giving these TCM maximum priority. NIRPC may propose substitution of a new TCM for all or a portion of an existing TCM that is experiencing implementation difficulties (see below).

VI. Substitution of TCMs in the SIP

After consultation with the ICG, NIRPC may recommend and proceed with the substitution of a new TCM in the SIP to overcome implementation difficulties with an existing TCM(s). The substitution will take place in accordance with NIRPC's adopted TCM substitution procedures, which provide for full public involvement. In the event of possible discrepancies between NIRPC's TCM Substitution Procedures and those in SAFETEA-LU (Public Law 109-59), the provisions of SAFETEA-LU will govern.

VII. Other Interagency Consultation Group Processes and Procedures

Interagency consultation procedures for specific conformity issues are described below:

1. Defining regionally significant projects (93.105 (c) (1) (ii)): Regionally significant projects are defined as a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs and would normally be included in the coded network for the regional transportation demand forecast model, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel. In March 2007, NIRPC adopted guidance on the identification of regionally significant projects (Resolution 07-04). The guidance has also been incorporated into the August 2007 Interagency Consultation Group Conformity Consultation Guidance. NIRPC's travel model roadway network also includes other types of facilities for reasons of functionality or connectivity that would not normally be considered regionally significant. NIRPC will periodically review with the ICG the types of facilities and projects that are coded in the network but which NIRPC recommends should not be classified as regionally significant (and which therefore would not trigger a new regional emissions analysis if amended into the TP/TIP). NIRPC will document the decisions of the ICG for future reference. The ICG will 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 will take place prior to the beginning of the conformity modeling analysis.
2. Determination of significant change in project design concept and scope (93.105 (c) (4) and (5)): Project sponsors should provide timely notice to NIRPC of any change in the design concept or scope of any regionally significant project in the TP and/or TIP. NIRPC will consider a significant change in design concept and scope to be one that would alter the coding of the project in the transportation network associated with the regional travel model. When a project(s) have a change in design concept and scope from that assumed in the most recent conformed TP and/or TIP, NIRPC will consider revisions to the TP and/or TIP if such a revision requires a new regional emissions analysis for the entire TP and/or TIP. NIRPC will evaluate projects that may be considered to have a change in design concept and scope and will consult with the ICG prior to advising the project sponsor as to how NIRPC intends to proceed with any request to amend the TP and/or TIP. Project sponsors should also provide timely notice to the NIRPC of any proposed regionally significant projects which should be included in TP/TIP updates prior to the beginning of the conformity analysis and

must work with NIRPC to provide for the design concept and scope of projects in sufficient detail to allow NIRPC to perform the regional emissions analysis.

3. Determining if exempt projects should be treated as non-exempt (93.105 (c) (iii)): NIRPC will identify all projects in the TP/TIP that meet the definition of an exempt project, as defined in the Conformity regulations. NIRPC will provide a list of exempt projects to the ICG for review prior to releasing the draft TP/TIP 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, NIRPC will notify the project sponsor of this determination and make appropriate changes to the conformity analysis, as required.
4. Treatment of non-FHWA/FTA regionally significant projects (93.105(c)(4)) : Any recipient of federal funding is required to disclose to NIRPC the design concept and scope of regionally significant projects that do not use FHWA or FTA funds. NIRPC will request that INDOT and local agencies identify all such projects prior to conducting a new conformity analysis for the TP and/or TIP. As part of the conformity analysis, NIRPC will also include a written response to any significant comment received about whether any project or projects of this type are adequately accounted for in the regional emissions analysis.
5. Projects that can advance during a conformity lapse: In the event of a conformity lapse, NIRPC will consult with the ICG to identify projects in the TP and/or TIP that may move forward. NIRPC will also consult the ICG on the process for preparing an Interim TP and/or TIP.
6. Addressing activities and emissions that cross MPO boundaries (93.105 (c)(3)): When a regionally significant project that is not exempt is proposed in another MPO's Plan or TIP crosses NIRPC's boundaries, NIRPC will review the project with the ICG to determine appropriate methods for addressing the emissions impact of the project in NIRPC's conformity analysis, consistent with EPA's conformity regulations.

VIII. Conflict Resolution (93.105 (d))

Conflicts between State agencies or between State agencies and NIRPC that arise during consultation will be resolved as follows:

1. A statement of the nature of the conflict will be prepared by the agency with the conflict and agreed to by the ICG.
2. Staff of the affected ICG agencies will meet in a good faith effort to resolve the conflict in a manner acceptable to all parties.
3. If the staff is unsuccessful, the NIRPC Executive Director or designee, Management within state agencies and all other parties to the conflict shall meet to resolve differences in a manner acceptable to all parties.

4. At the conclusion of the meeting between the parties to the conflict, if the conflict is still unresolved, the 14-day clock shall start.
5. Following these steps, IDEM has 14 days to appeal to the Governor after INDOT or NIRPC has notified IDEM that either party plans to proceed with their conformity decision or policy that is the source of the conflict. If IDEM appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If IDEM does not appeal to the Governor within 14 days, the NIRPC or INDOT may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the head or staff of the State or local air agency, INDOT, State transportation commission or board, or NIRPC.

IX. Public Consultation Procedures (93.105 (e))

NIRPC will follow its adopted public involvement procedures, which were developed in accordance with the requirements for public involvement in 23 CFR 450, when making conformity determinations on transportation plans, and programs. These procedures establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by NIRPC at the beginning of the public comment period and prior to taking formal action on a conformity determination for the TP and TIP, consistent with these requirements and those of 23 CFR 450.316(a). Meetings of the ICG are open to the public. Any charges imposed for public inspection and copying are consistent with the fee schedule contained in 49 CFR 7.43. The ICG agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

RESOLUTION
OF THE BOARD OF DIRECTORS OF THE
OHIO-KENTUCKY-INDIANA REGIONAL COUNCIL OF GOVERNMENTS
CONCERNING THE EXECUTION OF THE TRANSPORTATION CONFORMITY
CONSULTATION MEMORANDUM OF UNDERSTANDING

WHEREAS, in order to meet SAFETEA-LU requirements regarding air quality and transportation conformity, states must adopt procedures for interagency consultation (federal, state and local), resolution of conflicts, and public consultation; and

WHEREAS, a Memorandum of Understanding (MOU) has been prepared that contains formal consultation procedures among ten federal, state and local parties, including OKI; and

WHEREAS, the MOU will be submitted as a revision to the Ohio and Indiana State Implementation Plans (SIPs) and will govern conformity determinations in the Indiana and Ohio portions of the Cincinnati air quality nonattainment area; and

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Ohio-Kentucky-Indiana Regional Council of Governments at its public meeting of April 10, 2008 executes the Transportation Conformity Consultation Memorandum of Understanding.


CHRISTINE L. MATAICIC, PRESIDENT

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03/27/08

**MEMORANDUM OF UNDERSTANDING
AMONG
THE OHIO-KENTUCKY-INDIANA REGIONAL COUNCIL OF GOVERNMENTS,
THE OHIO ENVIRONMENTAL PROTECTION AGENCY,
THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,
THE INDIANA DEPARTMENT OF TRANSPORTATION,
THE MIAMI VALLEY REGIONAL PLANNING COMMISSION,
THE OHIO DEPARTMENT OF TRANSPORTATION,
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY-REGION 5,
THE FEDERAL HIGHWAY ADMINISTRATION-OHIO DIVISION,
THE FEDERAL HIGHWAY ADMINISTRATION-INDIANA DIVISION,
THE FEDERAL TRANSIT ADMINISTRATION-REGION 5**

The purpose of this Memorandum of Understanding (MOU) is to implement section 176(c)(4)(E) of the Clean Air Act (CAA), as amended (42 USC 7401 et seq.), the related requirements of 23 U.S. C. 109(j), and regulations under the Code of Federal Regulations (CFR) section 40, Part 93, Subpart A with respect to the conformity of transportation plans, programs, and projects that are developed, funded or approved by the United States Department of Transportation (U.S. DOT) and by Metropolitan Planning Organizations (MPOs), and the Ohio Department of Transportation (Ohio DOT), the Indiana Department of Transportation (INDOT) or other recipients of funds under title 23 USC or the Federal Transit Laws (49 USC Chapter 53). This MOU sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to applicable implementation plans developed according to Part A, section 110 and Part D of the CAA.

This is a MOU concerning the criteria and procedures for the conformity determination of transportation plans, programs and projects in the Cincinnati-Middletown-Wilmington OH-KY-IN, Combined Statistical Area for National Ambient Air Quality Standards (NAAQS), pursuant to the CAA Amendments of 1990.

The Kentucky portion of the Cincinnati-Middletown-Wilmington OH-KY-IN area will have a separate state rule or agreement for transportation conformity consultation. Although the Kentucky agencies and Region 4 federal agencies are not parties to this agreement, the agencies are expected to participate in the consultation meetings and to review materials. These parties are: Kentucky Environmental and Public Protection Cabinet (KEPPC); United States Environmental Protection Agency-Region 4 (U.S. EPA-R4); Kentucky Transportation Cabinet (KYTC); Federal Highway Administration-Kentucky Division (FHWA-KY); and Federal Transit Administration-Region 4 (FTA-R4). These parties do not need to be signatories to this MOU since Kentucky will submit a revision to the Kentucky SIP to address transportation conformity consultation procedures which will be the same or substantially similar to these procedures.

The 10 parties to this MOU are as follows, hereafter referred to as "all parties":

Ohio-Kentucky-Indiana Regional Council of Governments MPO (OKI)
Miami Valley Regional Planning Commission (MVRPC)
Ohio Environmental Protection Agency (Ohio EPA)
Indiana Department of Environmental Management (IDEM)
Ohio Department of Transportation (Ohio DOT)
Indiana Department of Transportation (INDOT)
Federal Highway Administration-Ohio Division (FHWA-OH)

Federal Highway Administration-Indiana Division (FHWA-IN)
Federal Transit Administration-Region 5 (FTA-R5)
United States Environmental Protection Agency-Region 5 (U.S. EPA-R5)

This MOU will be submitted as a revision to the Ohio State Implementation Plan (SIP) required by section 176 of the CAA Amendments of 1990 and will govern conformity determinations in the OKI MPO area. The OKI region consists of Dearborn County, Indiana; Boone, Campbell, and Kenton counties in Kentucky; Butler, Clermont, Hamilton and Warren counties in Ohio. OKI is responsible for the air quality conformity determination for the region's transportation plans, projects and programs in these counties. Clinton County is outside of the OKI region, but is part of the ozone nonattainment area. Ohio DOT is the lead planning agency for Clinton County. MVRPC is the lead planning agency for the cities of Franklin, Carlisle and Springboro in Warren County Ohio.

This MOU will continue to apply to any revised nonattainment area geographies resulting from future designations, or designation revisions for the criteria pollutants within the OKI areas.

Execution of this MOU by each party shall be by signature of each party's representative.

The provisions of this MOU shall be implemented through appropriate procedures, resolutions, or other means, in order to comply with the requirements of all federal and state laws and regulations relating to the conformity determination and development of applicable implementation plan revisions. This MOU along with Attachments A and B defines and delineates the roles, processes, and responsibilities of each signatory to this MOU.

**MEMORANDUM OF UNDERSTANDING
AMONG
THE OHIO-KENTUCKY-INDIANA REGIONAL COUNCIL OF GOVERNMENTS,
THE OHIO ENVIRONMENTAL PROTECTION AGENCY,
THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,
THE INDIANA DEPARTMENT OF TRANSPORTATION,
THE MIAMI VALLEY REGIONAL PLANNING COMMISSION,
THE OHIO DEPARTMENT OF TRANSPORTATION,
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY-REGION 5,
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THE FEDERAL TRANSIT ADMINISTRATION-REGION 5**

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The 10 parties to this MOU are as follows, hereafter referred to as "all parties":

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Ohio Environmental Protection Agency (Ohio EPA)
Indiana Department of Environmental Management (IDEM)
Ohio Department of Transportation (Ohio DOT)
Indiana Department of Transportation (INDOT)
Federal Highway Administration-Ohio Division (FHWA-OH)

Federal Highway Administration-Indiana Division (FHWA-IN)
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Attachment A

Transportation Air Quality Conformity Protocol

Conformity Procedures

In accordance with the requirements under section 176 (c)(4)(C) of the CAA, Ohio EPA submitted a state implementation plan (SIP) revision to U.S. EPA on August 17, 1995. This submittal was found to be complete on October 5, 1995. In this submittal, Ohio EPA adopted state rules to meet the requirements of 40 CFR Part 51, Subpart T, as published on November 24, 1993. Transportation conformity is required for all nonattainment or maintenance areas for any transportation related criteria pollutants [40 CFR 51.394 (b)].

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). SAFETEA-LU promotes more efficient and effective Federal surface transportation programs by focusing on transportation issues of national significance, while giving state and local transportation decision makers more flexibility for solving transportation problems in their communities. Section 6011 of SAFETEA-LU specifically addresses transportation conformity. One of the requirements, (f)(4)(E) states,

“Not later than 2 years after the date of enactment of the SAFETEA-LU the procedures under subparagraph (A) shall include a requirement that each state include in the state implementation plan criteria and procedures for consultation required by subparagraph (D) (i), and enforcement and enforceability (pursuant to sections 93.125 (c) and 93.122 (a) (4) (ii) of Title 40, Code of Federal Regulations (CFR) in accordance with the Administrator’s criteria and procedures for consultation, enforcement and enforceability.”

States are no longer required to adopt all of the provisions of the federal conformity rule. The three required conformity SIP elements are:

- 1) consultation procedures [40 CFR 93.105] (Attachment B);
- 2) procedures for determining regional transportation-related emissions [40 CFR 93.122(a)(4)(ii)] (Attachment A); and
- 3) enforceability of design concept and scope and project-level mitigation and control measures [40 CFR 93.125 (c)] (Attachment A).

In accordance with 40 CFR 93.105, the SIP or SIP revision shall include procedures for interagency consultation (federal, state and local), resolution of conflicts, and public consultation as described in Attachment B. Public consultation shall be developed in accordance with the requirements for public participation in 23 CFR Part 450. The SIP shall include procedures to be undertaken by OKI, state and federal DOTs, local air quality agencies and U.S. EPA, prior to making transportation conformity determinations, and by state and local air agencies and U.S. EPA with OKI, state and federal DOTs, in developing applicable implementation plans. OKI and Ohio DOT must provide reasonable opportunity for consultation with all parties and local air quality and transportation agencies as described in Attachment B.

In accordance with 40 CFR 93.122(a)(4)(ii), OKI will not include emissions reduction credits from any control measures that are not included in its transportation plan (TP) or transportation improvement program (TIP) and do not require a regulatory action, in the regional emissions analyses used in the conformity demonstration unless OKI, or FHWA/FTA obtains written commitments, as defined in 40 CFR 93.101, from the appropriate entities to implement those control measures. The written commitments to implement those control measures must be fulfilled by the appropriate entities. Prior to making a conformity determination on a TP or TIP, OKI will ensure the project design concept and scope are appropriately identified in the emissions analyses used in the regional conformity demonstration.

In accordance with 40 CFR 93.125(c), prior to making a project-level conformity determination for a transportation project, FHWA/FTA must obtain from the project sponsor and/or operator written commitments, as defined in 40 CFR 93.101, to implement any project-level mitigation or control measures in the construction or operation of the project identified as conditions for National Environmental Policy Act (NEPA) approval. The written commitments to implement those project-level mitigation or control measures must be fulfilled by the appropriate entities. Prior to making a project-level conformity determination, written commitments will be obtained before such mitigation or control measures are used in a project-level hot-spot conformity analysis [40 CFR 93.125(c)]. Consultation on these commitments will take place as a part of a consultation process prior to the project-level conformity analysis and determination. Interagency consultation for a project-level conformity analysis may occur separately from the consultation used during the development of a regional conformity demonstration.

Attachment B

Interagency Consultation Procedures

I. General

Ohio EPA will submit these consultation procedures as a revision to the SIP, whereby all parties to this MOU and other organizations with responsibilities for developing, submitting, or implementing provisions of a SIP must consult with each other on the development of the SIP, the TP, the TIP, and associated conformity determinations in accordance with 40 CFR 93.105(b)(1).

These procedures implement the interagency consultation process for OKI and include procedures to be undertaken by all parties to this MOU before making transportation conformity determinations on the TP and TIP in accordance with 40 CFR 93.105(a)(1) and 40 CFR 93.105(c)(3). This area's geographic coverage includes two MPO's, eight counties in three states: Dearborn County, Indiana; Boone, Campbell, Kenton counties in Kentucky; Butler, Clermont, Hamilton and Warren counties in Ohio. OKI's TP and TIP address only the MPO area. Clinton County is outside of the OKI region, but is part of the nonattainment area. Ohio DOT is the lead planning agency for Clinton County. MVRPC is the lead planning agency for the cities of Franklin, Carlisle and Springboro in Warren County, Ohio. These analyses are combined to make a conformity determination for the OKI region. KYTC and IDEM are lead planning agencies for their respective areas not within the OKI region.

Persons of any organizational level in the signatory agencies may participate in the of the interagency consultation group. All consultation will be open to the public, but not necessitate official public notification. Each agency chooses its representative for interagency consultation, and forwards that person's contact info to OKI whose representative is responsible for maintaining the participant list. Changes in representatives will be given to OKI. OKI will in turn redistribute it to all parties. OKI is responsible for convening meetings and providing an agenda.

Interagency consultation frequency will be as needed, unless there is consensus among the consultation parties to meet on a specific schedule (i.e. quarterly, biannually, annually, etc.). In most cases, consultation will be via conference call and/or email unless the interagency consultation group decides that certain items may require a face-to-face meeting and could not be handled via conference call or email.

Early in the TP and/or TIP development process, the MPO will develop a schedule for key activities and meetings leading up to the adoption of the TP, TIP or amendment to the TP or TIP. In developing the draft TP and/or TIP, the MPO brings important air quality conformity TP and/or TIP related issues to all parties in the interagency consultation group for discussion and feedback. OKI is responsible for making all materials used for these discussions available to the interagency consultation group prior to the consultation sessions. Similar consultation will occur with TP amendments if a new regional analysis is required.

Public participation in the development of the TP and/or TIP will be provided in accordance with OKI's adopted Public Participation Procedures in accordance with 23 CFR 450.

OKI will provide the interagency consultation group an opportunity to review the draft conformity analysis. This review will typically take place during the public review period. This is typically done by e-mail. The interagency consultation group will respond promptly to the OKI staff with any comments. Members of the public can comment on the draft conformity analysis in accordance with OKI's adopted public participation procedures. All comments received will be included in the final conformity documentation.

OKI and Ohio EPA will be responsible for maintaining a list of any TCMs that are in the applicable SIP for the OKI area [see section IV a].

The following process provides for final documents to be provided to all interagency consultation group members as required by 40 CFR 93.105(c)(7):

After the OKI Board of Director's (MPO Board) adopts the final TP or TIP and associated conformity determination, OKI will provide the final conformity documentation to FHWA and the interagency consultation group for a federal conformity finding. FHWA will initiate formal consultation and will provide 30 days for written comments from the interagency consultation group members. If appropriate, FHWA will issue the formal conformity finding on behalf of U.S. DOT. The TP update or amendment becomes effective the date the U.S. DOT conformity finding is issued. The TIP update or amendment only becomes effective after the U.S. DOT conformity finding is issued, and the FHWA approves the associated TIP update or amendment into Ohio's State Transportation Improvement Program (STIP). OKI will transmit electronic copies of the final conformity analysis to the interagency consultation group members and place a final copy on OKI's Web site.

II. Consultation on Transportation Plans, Transportation Plan Amendments, Transportation Improvement Programs, and Transportation Improvement Program Amendments [40 CFR 93.105]

Consultation on all non-conformity related aspects of transportation plans, transportation improvement programs, and amendments thereto shall be governed by the applicable participation plans developed pursuant to 23 USC 134/49 USC 5303(i)(5), (i)(6), and (j)(4) and 23 USC 135/49 USC 5304 (f)(3) and (g)(3). Consultation on conformity related aspects of these activities are delineated below.

a) Consultation on Transportation Plan and Transportation Plan Amendment Conformity Process

The federal conformity rules at 40 CFR Part 93 defines the criteria and procedures by which conformity will be established in accordance with 40 CF 93.105 (c), interagency consultation will include the following topics, as appropriate:

- travel forecasting and modeling assumptions;
- latest planning assumptions;
- motor vehicle emission factors to be used in conformity analysis;
- appropriate analysis years;
- determination of exempt projects and evaluating whether projects otherwise exempted (as listed in 93.126 and 93.127) should be treated as non-exempt.;

- determination of which minor arterials and other transportation projects should be considered regionally significant projects for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel;
- which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP;
- treatment of regionally significant projects (federal and non-federal funded) assumed in the transportation network and the year of operation;
- treatment of regionally significant projects that span MPO boundaries;
- status of TCM implementation;
- financial constraints and other requirements that affect conformity pursuant to federal statewide and metropolitan planning regulations (this item is not a requirement for consultation);
- reliance on a previous regional emissions analysis;
- conformity process public participation procedures; and
- the need for interim TP (in the event of a conformity lapse).

OKI is the lead agency for development of its transportation plans and amendments thereto. OKI is the lead agency for the development of the associated transportation conformity analyses for the Ohio counties of Butler, Clermont, Hamilton, and Warren, the Kentucky counties of Boone, Campbell and Kenton, and Dearborn County, Indiana. MVRPC, Ohio DOT, KYTC and IDEM are lead agencies for the conformity analyses for their respective areas outside the OKI region. OKI and the interagency consultation group will be provided the opportunity to review the Ohio DOT, and INDOT analyses prior to inclusion in the overall conformity document. The interagency consultation parties will participate in the plan development process, review associated documentation, and collaboratively decide on aspects of the conformity determination that must be determined through interagency consultation according to the regulations at 40 CFR Part 93. Opportunity for comment and participation is provided in the interagency consultation conferencing and by commenting on draft materials as described in the general of this document.

If new designations for criteria pollutants occur that expand analyses areas beyond those defined above, interagency consultation will determine the parties responsible for conducting those analyses in accordance with 40 CFR 93.105(c)(2)(ii).

b) Consultation and Notification Procedures for Conformity Analysis of TIP and TIP Amendments

Federal conformity rules at 40 CFR Part 93 defines the criteria and procedures by which conformity will be established. Following OKI's notice that the TIP air quality conformity process has been initiated, OKI and Ohio DOT will coordinate the TIP transportation conformity interagency consultation process. Interagency consultation will include the same topics listed for the transportation plan (see section II. a) as well as the additional topics listed below in accordance with 40 CFR 93.105 (c).

- identification of exempt TIP projects;
- identification of exempt projects which should be treated as nonexempt; and
- determination of an interim TIP (in the event of a conformity lapse) inclusive of projects that can advance during a conformity lapse.

For TIP amendments, OKI and Ohio DOT will consult as identified below:

Consultation required in situations requiring a conformity determination, including but not limited to:

- add non-exempt, regionally significant project that has not been accounted for in the regional emissions analysis; and
- change in non-exempt, regionally significant project that is not consistent with the design concept and scope or the conformity analyses years.

The interagency consultation group will be provided an opportunity to review the draft TIP or TIP amendment conformity documentation concurrent with the TIP public involvement review period. OKI will respond to any questions or comments from the consultation parties within 10 days. After the public review period OKI will adopt the final TIP or TIP amendment and conformity determination. OKI will provide the final TIP or TIP amendment and conformity documentation to the affected state DOT(s). The affected state DOT(s) will forward the documents to FHWA/FTA for final review, incorporation into the STIP and U.S. DOT conformity determination as required by 40 CFR 93.105 (c)(7) and 23 CFR 450.322 of the FHWA/FTA Statewide and Metropolitan Planning rule. Copies of the final TIP or TIP amendment and conformity documentation will be made available on OKI's Web site.

III. Transportation Plan and Transportation Improvement Program Interagency Consultation Agency Roles and Responsibilities [40 CFR 93.105(b)(2)]

Ohio EPA, IDEM

- Reviews and comments on all aspects of the conformity determinations for the TP and TIP in a timely manner;
- Develops, solicits input on and adopts motor vehicle emission budgets;
- Seeks U.S. EPA approval for the use of motor vehicle emissions factors and mobile source budgets in conformity analyses; and
- Reviews and comments on the transportation plan and TIP development documentation and associated air quality analyses in as agreed in this document.

Ohio DOT, INDOT

- Participates as a voting member of the OKI Board of Director's and committees as defined by the OKI agency bylaws;
- Project initiator for state sponsored transportation improvement projects in the OKI region;
- Works directly with OKI in providing and reviewing detailed project programming information;
- Defines the design concept and scope of state sponsored transportation improvement projects to conduct regional emissions analysis;
- Promptly notifies OKI of changes in design concept and scope, cost, and implementation year of regionally significant state sponsored projects;
- Assures project-level CO and PM hotspot analyses are included in OKI region transportation project NEPA documentation when required;
- Identifies and commits to project-level CO and PM mitigation measures for state sponsored transportation projects, as required;

- Implements TCMs for which Ohio DOT/KYTC/INDOT is responsible on the schedule that is found in the SIP;
- Maintains a list of TCMs in the SIP and progress toward implementing the TCMs;
- Works with local municipalities and other project sponsors to ensure that the above procedures are also implemented on locally sponsored highway projects; and
- Assists OKI with travel demand modeling and mobile source emissions estimating processes.

For STIP and STIP amendments exclusively involving projects within the Cincinnati-Middletown-Wilmington OH-KY-IN, Combined Statistical Area for NAAQS, but outside MPO boundaries, Ohio DOT, or INDOT will develop, coordinate, prepare and circulate conformity documentation for interagency consultation and public participation.

OKI

- Develops, coordinates, and circulates transportation plan and TIP supporting and technical documentation for interagency consultation and public participation;
- Conducts transportation plan/TIP and air quality conformity public participation processes;
- Maintains demographic and land use data for travel demand forecasting and regional emissions analysis;
- Works with Ohio DOT, INDOT and local sponsors to define the design concept and scope of projects in the transportation plan and TIP to conduct regional emissions analysis;
- Prepares transportation plan/TIP conformity documentation;
- Includes funding for SIP mandated TCMs in the transportation plan and TIP if required; and
- Adopts transportation plan/TIP, performs the regional emissions analysis and makes conformity determinations.

MVRPC, in the Cincinnati (Franklin, Carlisle, and Springboro) Air Quality Region:

- Develops, coordinates, and circulates transportation plan and TIP supporting and technical documentation for interagency consultation and public participation;
- Conducts transportation plan/TIP and air quality conformity public participation processes;
- Provides OKI with the design concept and scope of projects in the transportation plan and TIP to conduct regional emission analyses;
- Prepares transportation plan/TIP conformity documentation;
- Includes funding for SIP mandated TCMs in the transportation plan and TIP; and
- Adopts transportation plan/TIP and make conformity determinations.

In the Cincinnati (Franklin, Carlisle, and Springboro) Air Quality Region OKI will:

- Maintains demographic and land use data for travel demand forecasting and regional emissions analysis; and
- Conducts the analysis and prepare transportation plan/TIP conformity documentation.

If a new conformity determination is needed in the Cincinnati Air Quality Region due to transportation plan/TIP amendments in the MVRPC MPO only, MVRPC will be responsible for initiating interagency consultation and conducting the public participation process and OKI will conduct the conformity analysis and provide conformity documentation.

U.S. EPA

- Administers and provides guidance on the CAA and transportation conformity regulations;
- Determines adequacy of motor vehicle emissions budget used for making conformity determinations;
- Reviews and comments on transportation plan and transportation improvement program documentation in keeping with participation plan requirements; and
- Reviews and comments on conformity determinations for the transportation plans and transportation improvement programs.

FHWA/FTA

- Consults with U.S. EPA on transportation conformity determinations.
- Provides guidance on transportation planning regulations;
- Ensures that all transportation planning and transportation conformity requirements contained in 23 CFR Part 450 and 40 CFR Part 93, respectively, are met;
- Works with transit agencies to ensure that conformity procedures are implemented in transit agency-sponsored projects; and
- Makes transportation plan/TIP conformity determinations.

IV. State Implementation Plan (SIP) Consultation Process [40 CFR 93.105]

a. SIP Consultation Structure and Process in Ohio

Ohio EPA is responsible for preparing the SIP. If new transportation control strategies or TCMs are considered necessary to achieve and/or maintain federal air quality standards, the interagency consultation group will discuss possible TCMs for inclusion in the SIP. Ohio EPA will provide and update schedules for SIP development that will be available to all agencies and the public. Public involvement will be in accordance with Ohio EPA's public involvement procedures. Key documents will be posted on Ohio EPA's Web site. 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.

Ohio EPA is responsible for informing OKI of any TCMs in the SIP and OKI is responsible for maintaining a list of these TCMs and is responsible for tracking progress toward implementation and will share the list and implementation schedule with the interagency consultation parties. The interagency consultation parties will determine as required by 40 CFR 93.113(c) (1) whether past obstacles to implementation of TCMs, which are behind the schedule established in the SIP, have been identified and are being overcome. The interagency consultation group will assure that state and local agencies provide approval and funding priority to TCMs that are approved in the SIP. The interagency consultation group will also consider revisions to the SIP to remove TCMs or substitute TCMs or other emission reduction measures.

OKI and Ohio DOT develop the travel activity and emissions data that are used by Ohio EPA in establishing the on-road motor vehicle emission inventories for the SIP with consultation from Ohio EPA on the inputs for emission modeling.

If new transportation control strategies are considered that may aid the region to achieve and/or maintain federal air quality standards, Ohio EPA will provide OKI and Ohio DOT with guidance for estimating their impacts on regional emissions. This SIP process will define the motor vehicle emissions budget (MVEB), and its various components, that will be used for future conformity determinations of the TP and TIP. Prior to publishing the draft SIP, OKI, Ohio DOT, KYTC, KEPPC, INDOT and IDEM will have an opportunity to review and comment on the proposed MVEB.

In accordance with 40 CFR 93.105 (b)(2)(iii) and 40 CFR 93.105 (c)(7) Ohio EPA will circulate the draft SIP for public review, and all comments will be responded to in writing prior to adoption of the SIP. The draft will be amended as needed in response to comments received. Ohio EPA will then transmit the final document with amendments, along with the public notice, public hearing transcript and a summary of comments and responses, to U.S. EPA.

b. Agency Roles and Responsibilities [40 CFR 93.105(b)(2)(i)]

The following provides a summary on the roles and responsibilities of the different agencies with involvement in development and review of SIP submittals dealing with TCMs or emissions budgets.

Ohio EPA, KEPPC, IDEM

- Responsible for air quality monitoring, preparation and maintenance of detailed and comprehensive emissions inventories, air quality modeling, and other air quality planning and control responsibilities;
- Responsible for preparing drafts of SIP submittals, revising those drafts, incorporating other agencies' comments, attending and scheduling public hearings, preparing public hearing transcripts and responding to public comments;
- Responsible for timely SIP submittal to U.S. EPA; and
- Provides concurrence with TCM substitution in the SIP.

Ohio DOT, KYTC, INDOT

- Assists in developing regional travel demand forecasts used in the SIP mobile emissions inventories and analyses of new TCMs;
- Assists in developing mobile source inventories and analyses as needed; and
- Participates in reviewing and commenting on draft SIP documents.

OKI

- Responsible for developing regional transportation emissions analysis used in the SIP emissions inventories and analyses of new TCMs;
- Monitor and report on implementation of federal TCMs;
- Responsible for providing review and comments on draft SIP documents; and
- Provides concurrence with TCM substitution in the SIP.

U.S. EPA

- Receives the Ohio EPA SIP submittals and has the responsibility to act on them in a timely manner;
- Reviews and comments on submittals through various meetings, workshops and hearing that are conducted;
- Provides guidance on the CAA;

- Determines adequacy of motor vehicle emissions budget used for making TP/TIP conformity findings; and
- Provides concurrence with TCM substitution in the SIP.

FHWA/FTA

- Provides guidance on transportation planning regulation; and
- Participates in the SIP review and comment process.

Please note: while these are key areas and agencies involved in the development of the SIP, participation in the SIP process by other agencies may occur.

V. Project-level Conformity Determinations for Carbon Monoxide (CO) and/or Fine Particulate Matter (PM) [40 CFR 93.105 (c)(1)(i)]

Project sponsors are required to conduct project-level conformity analyses by the FHWA/FTA NEPA process. FHWA/FTA are responsible for making all project-level conformity determinations. FHWA/FTA, with the participation of U.S. EPA, identifies the applicable procedures for CO and/or PM analyses. Project sponsors should use the most recently identified procedures. In accordance with 40 CFR 93.105 (c)(1)(i) and other applicable regulations, Ohio DOT, KYTC and INDOT will determine the following:

1. That FHWA/FTA, with U.S. EPA review participation, has approved the project-level CO and/or PM conformity analyses which are included in the project's environmental document prior to initiating federal authorizations.
2. That the design concept and scope of the project has not changed significantly from that used by OKI, Ohio DOT, KYTC and INDOT in their most recent regional transportation conformity analyses of the TP and TIP.

The OKI governing board or policy committee may periodically review and participate with Ohio DOT, KYTC, INDOT and other agencies as appropriate in the update of the CO and/or PM analyses. Through the NEPA process, Ohio DOT, KYTC and INDOT may provide technical guidance to project sponsors who use these procedures.

VI. Monitoring of Transportation Control Measures (TCMs) [40 CFR 93.105 (c)(1)(iv)]

As part of the conformity documentation for a TP and/or TIP, OKI will identify the status of SIP TCMs. If TCM emissions reductions are included as part of the motor vehicle emissions budget, OKI will estimate the portion of emission reductions that have been achieved. If there are funding or scheduling issues for a SIP transportation control measure, OKI will describe the steps being undertaken to overcome these obstacles, including means to ensure that funding agencies are giving these TCMs maximum priority. OKI may propose substitution of a new TCM or TCMs for all or a portion of an existing TCM that is experiencing implementation difficulties (see section VII below).

VII. Conflict Resolution [40 CFR 93.105 (d)]

Conflicts between any parties of this MOU that arise during consultation will be resolved as follows:

1. A statement of the nature of the conflict will be prepared and agreed to by the conflicting parties and shared with the remaining signatories.
2. Disagreeing parties will consult in a good faith effort to resolve the conflict in a manner acceptable to all parties.
3. If they are unsuccessful, the directors of the signatory agencies or their designees shall meet to resolve differences in a manner acceptable to all parties.
4. If none of the above steps produces a satisfactory resolution, the directors of the signatory agencies have 14 days to appeal to the governor(s) of the affected states. OKI will send correspondence to the directors of the signatory agencies informing them that attempts to resolve the conflict have failed and they plan to proceed with their conformity decision or policy in conflict. The 14-day appeal period will commence on the first normal business day following Ohio EPA's and IDEM's receipt of correspondence (whichever is later) via Certified U.S. Mail and/or other certified delivery from OKI. The appeal period will expire at midnight of the 14th calendar day following receipt of such notice.
5. If a party other than Ohio EPA or IDEM appeals to the Governor, that participant must inform the Ohio EPA or IDEM of the Governor's response to the appeal. Ohio EPA or IDEM has an additional 14 calendar days from that notification of appeal to the Governor if it disagrees with the response. If Ohio EPA or IDEM appeals to their respective Governor, the final conformity determination must have the concurrence of the Governor. If Ohio EPA or IDEM does not appeal to the Governor within 14 days, OKI may proceed with the final conformity determinations. The Governor may delegate his or her role in the process, but not to the head or staff of Ohio EPA, Ohio DOT, IDEM, INDOT or OKI.

VIII. Public Consultation Procedures [40 CFR 93.105 (e)]

OKI will follow its adopted public participation procedures when making conformity determinations on transportation plans and programs. These procedures establish a proactive public participation process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by OKI at the beginning of the public comment period and prior to taking formal action on a conformity determination for the TP and TIP, consistent with these requirements and those of 23 CFR 450.316(a). Meetings of OKI are open to the public. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.43. These agencies also shall provide opportunity for public participation in conformity determinations for projects where otherwise required by law.

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

**Parties: OKI, MVRPC, Ohio EPA, Ohio DOT, IDEM, INDOT, FHWA, FTA and U.S.
EPA**

LIST of SIGNATORIES

Note: Signatures appear on separate, multiple pages.

Mark Policinski
Executive Director
Ohio-Kentucky-Indiana Regional Council of Governments

Donald R. Spang
Executive Director
Miami Valley Regional Planning Commission

Robert J. Shook
Chairperson

Chris Korleski
Director
Ohio Environmental Protection Agency

James G. Beasley, P.E., P.S.
Director
Ohio Department of Transportation

Daniel Murray
Assistant Commissioner
Indiana Department of Environmental Management, Office of Air Quality

Joseph Gustin, Deputy Commissioner, Planning Operations
Indiana Department of Transportation

Dennis Decker
Division Administrator
Ohio Division
Federal Highway Administration (*FHWA-OH is lead for U.S. DOT*)

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

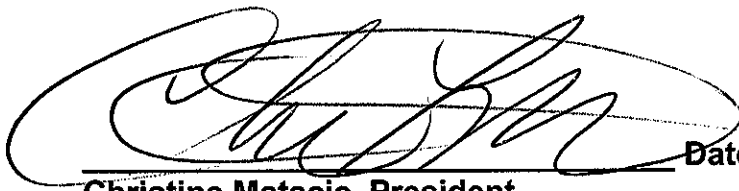
Marisol Simon
Regional Administrator
Region 5
Federal Transit Administration

Mary Gade
Regional Administrator
Region 5
U.S. Environmental Protection Agency

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

**Parties: OKI, MVRPC, Ohio EPA, Ohio DOT, IDEM, INDOT, FHWA, FTA and
U.S.EPA**

Note: Signatures appear on separate, multiple pages.

 Date: 4/10/08

**Christine Matacic, President
Ohio-Kentucky-Indiana Regional Council of Governments**

 Date: 4/10/08

**Mark Policinski, Executive Director
Ohio-Kentucky-Indiana Regional Council of Governments**

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

**Parties: OKI, MVRPC, Ohio EPA, Ohio DOT, IDEM, INDOT, FHWA, FTA and
U.S.EPA**

Note: Signatures appear on separate, multiple pages.


Robert J. Shook, Chairperson

Date:

4/3/08



Donald R. Spang, Executive Director
Miami Valley Regional Planning Commission

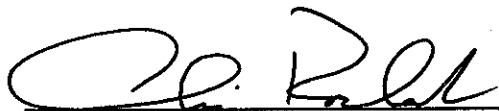
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4/3/08

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

**Parties: OKI, MVRPC, Ohio EPA, KEPPC, IDEM, Ohio DOT, KYTC, INDOT, FHWA,
FTA and U.S. EPA**

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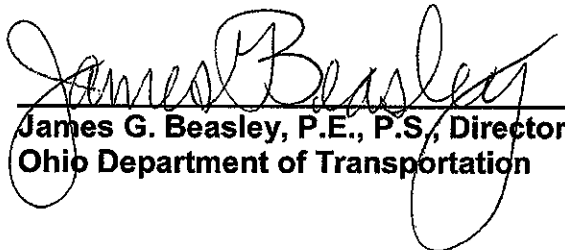
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1/23/08

**Chris Korleski, Director
Ohio Environmental Protection Agency**

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**
**Parties: OKI, MVRPC, Ohio EPA, Ohio DOT, IDEM, INDOT, FHWA, FTA and
U.S.EPA**

Note: Signatures appear on separate, multiple pages.


James G. Beasley, P.E., P.S., Director
Ohio Department of Transportation

Date: 6/25/08

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

**Parties: OKI, MVRPC, Ohio EPA, Ohio DOT, IDEM, INDOT, FHWA, FTA and
U.S.EPA**

Note: Signatures appear on separate, multiple pages.

 Date: 4/11/2008
Thomas W. Easterly, Commissioner
Indiana Department of Environmental Management

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

**Parties: OKI, MVRPC, Ohio EPA, Ohio DOT, IDEM, INDOT, FHWA, FTA and
U.S.EPA**

Note: Signatures appear on separate, multiple pages.



Joseph Gustin, Deputy Commissioner, Planning Operations
Indiana Department of Transportation

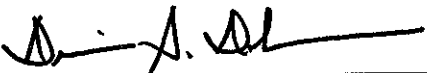
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**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

**Parties: OKI, MVRPC, Ohio EPA, KEPPC, IDEM, Ohio DOT, K.
FTA and U.S. EPA**

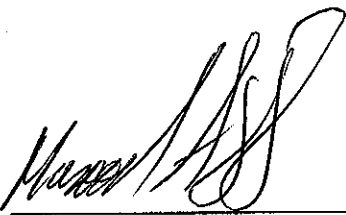
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 Date: 2/12/2008
Dennis Decker, Division Administrator
Federal Highway Administration, Ohio Division

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

**Parties: OKI, MVRPC, Ohio EPA, KEPPC, IDEM, Ohio DOT, KYTC, INDOT, FHWA,
FTA and U.S. EPA**

Note: Signatures appear on separate, multiple pages.

for 

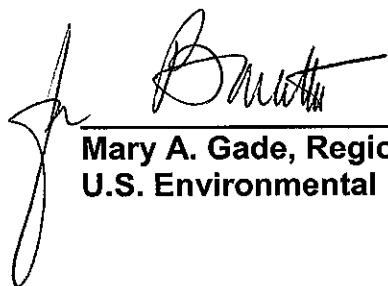
Date: 2/4/08

**Robert F. Tally, Jr., P.E., Division Administrator
Federal Highway Administration, Indiana Division**

**MEMORANDUM OF UNDERSTANDING
TRANSPORTATION CONFORMITY
CONSULTATION PROCEDURES**

**Parties: OKI, MVRPC, Ohio EPA, Ohio DOT, IDEM, INDOT, FHWA, FTA and
U.S.EPA**

Note: Signatures appear on separate, multiple pages.



**Mary A. Gade, Regional Administrator
U.S. Environmental Protection Agency, Region 5**

Date:

4/15/08

**WEST CENTRAL INDIANA ECONOMIC DEVELOPMENT DISTRICT, INC.
TRANSPORTATION POLICY COMMITTEE**

RESOLUTION NUMBER 031808-04

A resolution approving the West Central Indiana Economic Development District, Inc., ***TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL***, included as Attachment A (Conformity Procedures) and Attachment B (Interagency Consultation Procedures) to this resolution, for determining the conformity of the Transportation Plan (TP) and Transportation Improvement Program (TIP) with state and federal air quality plans and procedures. These two attachments constitute the "Conformity SIP" (the conformity portion of the state and federal air quality plan called the State Implementation Plan (SIP) for the Terre Haute Urbanized Area and Vigo County Metropolitan Planning Area).

This Resolution will be submitted to the Indiana Department of Environmental Management (IDEM) and the U.S. Environmental Protection Agency (EPA) for approval as revisions to the Indiana SIP, which governs transportation conformity and decisions in the Terre Haute Urbanized Area and Vigo County MPA.

WHEREAS, West Central Indiana Economic Development District, Inc. (WCIEDD) is the Metropolitan Planning Organization, hereafter referred to as the MPO, designated by the Governor of Indiana, for the Terre Haute Urbanized Area and the Vigo County Metropolitan Planning Area, hereafter collectively referred to as the MPA, pursuant to 23 CFR 450 and 49 CFR 613; and

WHEREAS, the MPO and IDEM are collectively responsible for developing and implementing various portions of federal air quality plans in the MPA; and

WHEREAS, prior to adopting or amending the TP and TIP, the MPO must first determine that these plans and programs conform to the SIP for the MPA using procedures established by the EPA; and

WHEREAS, eight agencies have cooperatively prepared a protocol for determining transportation air quality conformity in compliance with Federal regulation entitled: ***METROPOLITAN PLANNING ORGANIZATION, WEST CENTRAL INDIANA ECONOMIC DEVELOPMENT DISTRICT, TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL*** ("the Protocol"), which includes certain conformity procedures relating to transportation plans and programs, and projects and interagency consultation procedures, attached hereto as Attachment A and Attachment B, respectively, and incorporated herein as though set forth at length; and

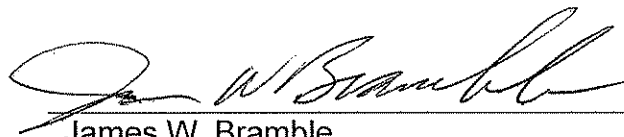
WHEREAS, the eight agencies have revised the Protocol to reflect the most recent guidance provided by the EPA; and

WHEREAS, the Protocol must be submitted to IDEM for review and subsequent submittal to the EPA for revision of the Vigo County, Indiana SIP; now therefore be it

RESOLVED, that the Protocol to be included in the Conformity SIP is approved for submission to IDEM and to the EPA; and, be it further

RESOLVED, that the MPO staff may make minor adjustments, as necessary, to the Protocol in the Conformity SIP in response to IDEM and EPA comments.

The above and foregoing resolution is hereby adopted this 18th day of March 2008 during a regular meeting of the MPO's Transportation Policy Committee held in Terre Haute, IN.

A handwritten signature in black ink, appearing to read "James W. Bramble", is written over a horizontal line.

James W. Bramble
Transportation Policy Committee Chair

**METROPOLITAN PLANNING ORGANIZATION
WEST CENTRAL INDIANA ECONOMIC DEVELOPMENT DISTRICT
TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL**

Conformity Procedures

Article I. Summary:

Current federal law does not require that EPA's detailed procedures for determining the conformity of plans, programs and projects be included in a "Conformity SIP". This SIP revision however must include procedures for interagency consultation (Federal, State and local), resolution of conflict and public consultation set forth in 40 CFR 93.105 (consultation procedures are found in Attachment B), and provisions for written commitments for control and mitigation measures required by 40 CFR 93.122(a)(4)(ii) and 125(c) (these commitments are below). This document, when submitted and approved as a SIP revision, gives full legal effect to the following three requirements of the Federal Transportation Conformity Rule, 40 CFR Part 93 Subpart A:

(1) 40 CFR 93.105, which addresses consultation procedures.

(2) 40 CRR 93.122(a)(4)(ii), which states conformity SIPs must provide that written commitments to control measures that are not included in a Metropolitan Planning Organization's (MPO) Transportation Plan (TP) and Transportation Improvement Program (TIP) must be obtained prior to a conformity determination and that such commitments must be fulfilled.

(3) 40 CFR 93.125(c), which states that conformity SIPs must require written commitments to mitigation measures and that the written commitments must be obtained prior to a positive project-level conformity determination, and that project sponsors comply with such commitments.

Following EPA approval of these procedures as a revision to the SIP, conformity determinations will be governed by the approved state criteria and procedures as well as any applicable portions of the federal conformity rules that are not addressed by this document.

Article II. PROVISIONS 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 TP and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions study unless the conformity determination includes written commitments from the appropriate entities to implement those control measures, as defined in 40 CFR 93.101. Written commitments to control measures not included in the TP and TIP must be obtained prior to a conformity determination and such commitments must be fulfilled. Consultation on

these commitments will 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 MPO, other recipients 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, PM₁₀, or PM_{2.5} 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 conformity determinations for a TP or TIP, and are included in the project design concept and scope which is used in the regional emissions analysis, required by 40 CFR 93.118 and 93.119, or used in the project-level hot-spot analysis, required by 40 CFR 93.116. Consultation on these commitments will take place as a part of the consultation process prior to the conformity analysis and determination.

**METROPOLITAN PLANNING ORGANIZATION
WEST CENTRAL INDIANA ECONOMIC DEVELOPMENT DISTRICT
TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL**

Interagency Consultation Procedures

1. Definitions:

AQCA - Air Quality Conformity Analysis
EPA - United States Environmental Protection Agency
FHWA - Federal Highway Administration
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
MPO - Metropolitan Planning Organization
MVEB - Motor Vehicle Emissions Budget
NEPA - National Environmental Policy Act
PPP – Public Participation Plan
SIP - State Implementation Plan
TCMs - Transportation Control Measures
TDM - Travel Demand Model
TIP - Transportation Improvement Program
TP - Transportation Plan
USDOT - United States Department of Transportation
VMT - Vehicle Miles Traveled

2. General:

2.1. These procedures implement the interagency consultation process as required by 40 CFR 93.105(b) for the Terre Haute Urbanized Area and Vigo County Metropolitan Planning Area, hereafter collectively referred to as the MPA, and include procedures to be undertaken by West Central Indiana Economic Development District, hereafter referred to as the MPO, Indiana Department of Transportation (INDOT), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Indiana Department of Environmental Management (IDEM), U.S. Environmental Protection Agency (EPA), local air and transit agencies (as appropriate) and other agencies not listed, before making transportation conformity determinations on the TP and TIP.

2.2. Additional details on consultation are contained in the Indiana guidance document on transportation conformity entitled "Interagency Consultation Group Conformity Consultation Guidance, August 2007". This guidance document provides MPOs with detailed guidance on conformity consultation and

procedures, but is not legally binding. Only the procedures approved into the State Implementation Plan (SIP) are legally binding.

- 2.3. The TP will be fiscally responsible and the TIP will be fiscally constrained. The Indiana Statewide Transportation Improvement Plan (INSTIP) will be consistent with the TIP, in order to comply with 23 CFR 450.216(b). INDOT and the MPO will reach consensus regarding the list of INDOT-sponsored projects to be included in the MPO TP and TIP, project design concept and scope, project phasing (PE, RW, CN, etc.), and the projected year that each project is expected to be open to traffic. INDOT jurisdiction projects are fiscally constrained in the context of the INSTIP, and thus the MPO will not add INDOT jurisdiction projects, other than those listed in the INDOT Statewide Transportation Plan (INTP), without prior concurrence from INDOT or prior to identifying an alternate funding source.
- 2.4. For transportation activities which cross the borders of the established MPA or nonattainment areas, or where a nonattainment area involves a donut area and/or multiple MPOs, the conformity test methodology will clearly delineate agency responsibilities for modeling, assembly of the air quality conformity analysis document, public involvement, and how the respective conformity finding(s) will be issued.

3. Interagency Consultation Group:

- 3.1. To conduct consultation, staff involved in conformity issues for their respective agencies will 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 representation from the following agencies:
- Federal agencies: FHWA, EPA and FTA
 - State agencies: INDOT and IDEM
 - Regional planning agencies: West Central Indiana Economic Development District, Inc.
 - Local transit agencies: Terre Haute Transit Utility
 - Local air agencies: Vigo County Air Pollution Control
- 3.2. The MPO will maintain a directory of ICG contacts at each ICG member agency. These agencies are responsible for notifying ICG member agencies of individual contact changes. The ICG agencies should also establish the practice of having at least one (1) staff member who can serve as an alternate contact if the primary contact at the agency is unavailable for consultation.

3.3. Interagency Consultation Group Meetings:

- 3.3.1. The MPO is responsible for initiating consultation with the ICG when the TP/TIP is to be amended or updated.
- 3.3.2. The Initial ICG Meeting (typically a conference call) should include, but not be limited to, all of the agencies listed above. The MPO should attempt to pre-coordinate conference calls for a time that is acceptable to all ICG representatives.
- 3.3.3. The purpose of the Initial ICG Meeting is to establish consensus regarding the TP/TIP update/amendment schedule, latest planning assumptions, and the analysis methodology. The MPO should provide the ICG with necessary background information concerning the update/amendment as soon as possible, and prior to the conference call. If there are no changes to the schedule, planning assumptions, etc., the ICG may reaffirm the existing practices. The MPO will respond verbally or by email to all questions and comments from ICG members regarding the update/amendment or the background information.
- 3.3.4. The MPO will prepare initial meeting minutes to document ICG concurrence regarding items and all decisions made during the initial consultation meeting. The MPO will forward these meeting minutes and the project list to the ICG as soon as reasonably possible. The MPO will follow-up with ICG representatives as needed during the consultation period to clarify outstanding issues. The MPO will schedule a follow-up meeting if needed (i.e. agency concurrence cannot be reached). The MPO will also schedule a follow-up meeting if any ICG member(s) requests a meeting to discuss issues under the purview of the ICG as described below, including whether certain events would trigger the need to make a new conformity determination for the TP/TIP. The agency requesting the follow-up meeting will be responsible for preparing and distributing the meeting minutes from that meeting.
- 3.3.5. Meeting frequency will 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 will be via conference call and/or email, unless the ICG decides that certain items may require a face-to-face meeting and cannot be handled via conference call or email.
- 3.3.6. Persons from any organizational level in the member agencies may attend or participate in meetings of the ICG. All meetings of the ICG will be open to the public, but official public notification of scheduled ICG meetings is not required.

4. Consultation for an update or amendment of the TP/TIP when a new regional analysis is required:

4.1. Consultation Structure and Process

- 4.1.1. TP/TIP updates/amendments that require a new regional emission analysis will be developed through the ICG. The MPO is responsible for convening meetings of the ICG for this purpose.
- 4.1.2. Early in the TP/TIP development process, the MPO will develop a schedule for key activities and meetings leading up to the adoption of the TP/TIP. In developing the draft TP/TIP, the MPO will bring important related development issues to the ICG for discussion and feedback. The MPO is responsible for transmitting all supporting materials used for these discussions to the ICG prior to the meetings, or on occasion, they may distribute materials at the meetings. All materials relevant to interagency consultation, such as the TP/TIP schedule(s), background or related material, and the draft TP/TIP, will also be transmitted to the ICG for discussion and feedback.
- 4.1.3. Public involvement in the development of the TP/TIP will be in accordance with the MPO's adopted Public Participation Plan (PPP) established under 23 CFR 450. The MPO staff will respond to all significant public comments received during the TP/TIP development process.
- 4.1.4. Policy decisions and actions pertaining to the TP/TIP are the responsibility of the MPO and will be made through the Transportation Policy Committee (TPC) and its standing committee structure. The MPO will transmit TP/TIP related materials to be discussed at the TPC meeting(s) to the ICG prior to the meeting, or on occasion, they may distribute materials at the meeting(s). MPO staff and members of the ICG agencies are also invited to attend and participate in TPC meetings.

4.2. Agency Roles and Responsibilities:

40 CFR 93.105 (b)(2)(i) establishes a requirement for identification of roles and responsibilities in the consultation SIP. As such, the following table outlines expected roles and responsibilities of key agencies in TP/TIP development and review.

Agency	Roles
MPO	<ul style="list-style-type: none"> • Runs travel demand model (TDM) • Updates/amends the TP and TIP • Prepares Conformity Demonstrations for the TP and/or TIP Responsibilities of the MPO should be mutually agreed upon by the MPO in consultation with other appropriate ICG parties. • Prepares the AQCA document for nonattainment areas in the MPO planning area • Manages public participation in the process in accordance with the adopted PPP • Transportation Policy Committee makes the conformity determination and adopts the TP and/or TIP via formal resolution • Provides a final copy of AQCA, TP and/or TIP packages to review agencies • Maintains and manages conformity process schedule
INDOT	<ul style="list-style-type: none"> • Runs Statewide travel demand model for non-MPO areas of the State • Submits INDOT expansion projects to the MPO for inclusion in modeling and conformity demonstrations, in accordance with the established conformity schedule • Provides traffic count information, HPMS VMT, and other data, as needed, to the MPO • Prepares AQCA for rural nonattainment areas (ozone and PM 2.5), as needed • Reviews AQCA and comments within the allotted time
IDEM	<ul style="list-style-type: none"> • Develops motor vehicle emissions budgets (MVEBs) in consultation with all other ICG members • Creates and develops state implementation plans (SIPs) in consultation with all other ICG members • Develop SIP emissions factors using the approved emissions model (or delegates responsibility as agreed with other appropriate ICG members) • Reviews AQCA and comments within the allotted time
Local Air Agencies (If applicable)	<ul style="list-style-type: none"> • Reviews conformity documentation • Provides technical guidance and advice • May develop emissions factors using the appropriate emissions model
FHWA	<ul style="list-style-type: none"> • Coordinates the federal review conformity determination • Facilitates additional consultation as necessary if adverse comments are received during consultation • Monitors MPO conformity process schedule • Assists other ICG members with commitment follow-up • Provides technical guidance and advice on conformity • Reviews conformity documentation • Issues United States Department of Transportation (USDOT) conformity determination letter
FTA	<ul style="list-style-type: none"> • Reviews conformity documentation • Reviews AQCA and comments within the allotted time

Agency	Roles
EPA	<ul style="list-style-type: none"> • Promulgates conformity regulations • Approves the SIP and reviews motor vehicle emissions budgets (MVEBs) for adequacy. • Provides technical advice and guidance on conformity • Reviews conformity determination • Reviews final AQCA and submits a recommendation for conformity finding letter

4.3. Consultation on TP and/or TP Amendment Conformity Analysis:

Consultation on the assumptions and approach to the conformity analysis of the TP and/or a TP update/amendment will occur during the preparation or discussion of required documents outlined above. As a part of the development process, the MPO should 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. (40 CFR 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 the most recent travel survey and the need for funding of research and data collection efforts and regional transportation model development (40 CFR 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 40 CFR 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), and
- Action(s) by the MPO adopting the TP and that a finding of conformity with the SIP is demonstrated.

4.4. Consultation and Notification Procedures for Conformity Analysis of TIP and/or TIP Amendments:

- ##### 4.4.1. Consultation on the assumptions and approach to the conformity analysis of a TIP and/or TIP amendment will occur during the preparation of the draft amendment.

4.4.2. When preparing a new TIP, the MPO will consult with the ICG on the same topics listed for the TP (see 4.3), as well as the additional topics listed below:

- Identification of exempt projects in the TIP,
- Identification of exempt projects which should be treated as non exempt,
- Determination of projects which are regionally significant (both FHWA/FTA and non FHWA/FTA funded projects), and
- Development of an Interim TIP (in the event of a conformity lapse) .

4.4.3. For TIP amendments, the MPO will consult with the ICG, as a minimum, when a new conformity determination is triggered by:

- Addition of a regionally significant project to the TIP when it has already been appropriately accounted for in the regional emissions analysis for the TP,
- Addition of a non-regionally significant project to the TIP,
- Addition of non-exempt, regionally significant project that has not been accounted for in the regional emissions analysis,
- Change in non-exempt, regionally significant project that is not consistent with the design concept and scope or the conformity analysis years, and
- Activities that trigger a new conformity analysis and/or determination such as the effective date of adequate or approved motor vehicle emissions budgets (a new conformity determination must be made within 2 years).

4.5. The ICG review of any draft conformity analysis will typically begin during the public review period conducted in accordance with the adopted PPP. The MPO will request that the FHWA initiate the formal conformity consultation process. This is typically done by e-mail after the MPO has adopted the TP/TIP update or amendment and issued the associated conformity resolution(s). The ICG will respond promptly to the MPO staff with any comments.

4.6. The following process provides for final documents to be provided to all ICG members as required by 40 CFR 93.105(c)(7):

After the TPC approves the final conformity analysis, the MPO will provide the final conformity analysis and supporting documentation to FHWA and the ICG for a federal conformity finding determination. FHWA will initiate formal consultation and provide a 30 day period for written comments from ICG members. If appropriate, FHWA will issue the formal conformity finding on behalf of USDOT. The TP update or amendment becomes effective on the date the USDOT conformity finding is issued. The TIP update or amendment only becomes effective after the USDOT conformity finding is issued, and the

FHWA approves the associated TIP update or amendment into the INSTIP. The MPO will transmit electronic copies of the final conformity analysis to ICG members and post a copy of the final determination on the MPO's Web site.

4.7. Limited Consultation Required:

- 4.7.1. TP/TIP amendments/updates that only involve exempt projects will be handled in an expedited fashion. The MPO will forward the project list to the ICG and request that any questions or comments regarding the exempt status of any project(s) be submitted back to the MPO within 1-week. No response from the ICG will be construed as agency concurrence in the finding that the projects are exempt. ICG members who are not available during the 1-week timeframe should appoint a backup to review proposed amendments/updates on their behalf, so as not to delay the coordination process. The AQCA documentation and/or resolution adopting the exempt amendment will specifically state that the list of exempt projects was circulated to the ICG and there is ICG concurrence that the associated projects are exempt.
- 4.7.2. Likewise, an ICG meeting will not be scheduled if a TP/TIP amendment or update does not require a new regional emissions analysis. The MPO will forward the project list to the ICG, identify which projects are exempt, non-exempt, and/or not regionally significant, confirm that each project is consistent with the design concept and scope of the project that was modeled in the most recent conformity demonstration, affirm that the open-to-traffic date of each project is consistent with the associated analysis scenario in the most recent regional emissions analysis, confirm that the previous emissions analysis is consistent with the requirements of 40 CFR 93.118 (including that conformity to all currently applicable budgets is demonstrated) and/or 40 CFR 93.119, and establish a deadline for ICG comments (minimum 2-week comment period) on the conformity demonstration. No response will be construed as agency concurrence. ICG members who are not available during the 2-week timeframe should appoint a backup to review proposed amendments/updates on their behalf so as not to delay the coordination process. A follow-up meeting may be needed if concurrence of all agencies is not reached. The AQCA document and/or conformity finding/resolution will specifically reference ICG consultation and concurrence with the TP/TIP amendment/update conformity demonstration.

5. State Implementation Plan (SIP) Consultation Structure and Process:

- 5.1. IDEM has responsibility for developing SIPs and, as such, must assure that assumptions made during the emissions analysis process are consistent with those in the appropriate SIP. The SIP will normally be developed independently of the ICG. However, all ICG agencies will be provided with applicable information and the opportunity to participate in the development of the SIP, with

a focus on setting emission budgets and developing TCMs for inclusion, when and if appropriate. IDEM will develop and update schedules for SIP development and insure these schedules are made available to all agencies and the public. Public involvement will be in accordance with IDEM's public involvement procedures. Key documents will also 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.

5.2. IDEM may request the MPO provide the travel activity data used to develop 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 the MPO evaluate potential new measures. The ICG will be convened to discuss possible TCMs for inclusion in the SIP. This SIP and consultation process will define the motor vehicle emissions budget (MVEB), and 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 will have an opportunity to review and comment on the proposed MVEB.

5.3. IDEM will circulate the draft SIP for public review and provide a written response to all comments prior to adoption of the SIP. IDEM will then transmit the adopted submittal, along with the public notice, public hearing transcript and a summary of comments and responses, to the EPA.

6. Monitoring of Transportation Control Measures (TCMs):

6.1. Periodic conformity analyses of the TP and TIP will include updates on implementation of TCMs, if TCMs are specified in the applicable SIP. If applicable, the ICG may request more frequent TCM updates on an as needed basis.

6.2. As a part of the new conformity analysis of a TP or TIP, the MPO will 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, the MPO will also estimate the portion of emission reductions that have been achieved. If there are funding or scheduling issues for a TCM, the MPO will describe the steps being taken to overcome these obstacles, including means to ensure that funding agencies are giving these TCM maximum priority. The MPO may propose substitution of a new TCM for all or a portion of an existing TCM that is experiencing implementation difficulties (see below).

7. **Substitution of TCMs in the SIP:**

After consultation with the ICG, the MPO may recommend and proceed with the substitution of a new TCM in the SIP to overcome implementation difficulties with an existing TCM(s). The substitution will take place in accordance with MPO's adopted TCM substitution procedures, which provide for full public involvement. In the event of possible discrepancies between the MPO's TCM Substitution Procedures and those in SAFETEA-LU (Public Law 109-59), the provisions of SAFETEA-LU will take precedence.

8. **Other Interagency Consultation Group Processes and Procedures:**

Interagency consultation procedures for specific conformity issues are described below:

8.1. Defining regionally significant projects (40 CFR 93.105(c)(1)(ii)): A regionally significant project is defined as a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs and would normally be included in the coded network for the regional transportation demand forecast model, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel. The MPO's travel demand model roadway network may also include other types of facilities for reasons of functionality or connectivity that would not normally be considered regionally significant. The MPO will periodically review, with the ICG, the types of facilities and projects that are coded in the network, but that the MPO recommends should not be classified as regionally significant (and would therefore not trigger a new regional emissions analysis, if amended into the TP/TIP). The MPO will document the decisions of the ICG for future reference. The ICG will also discuss and determine projects that would normally not be determined as regionally significant, according to the modeling definition above, but should be treated as regionally significant for conformity purposes. This consultation will take place prior to the beginning of the conformity modeling analysis.

8.2. Determination of significant change in project design concept and scope (CFR 93.105(c)(4) and (5)): Project sponsors should provide timely notice to the MPO of any change in the design concept or scope of any regionally significant project in the TP and/or TIP. The MPO will consider a significant change in design concept and scope to be one that would alter the coding of the project in the transportation network associated with the regional travel demand model. When a project(s) has a change in design concept and scope from that assumed in the most recent conforming TP and/or TIP, the MPO will consider a revision to the TP and/or TIP, if such a revision requires a new regional emissions analysis for the entire TP and/or TIP. The MPO will evaluate projects that may be considered to have a change in design concept and scope and will consult with the ICG prior to advising the project sponsor as to how the MPO intends to proceed with any request to amend the TP and/or TIP. Project sponsors should

also provide timely notice to the MPO, of any proposed regionally significant projects which should be included in TP/TIP updates prior to the beginning of the conformity analysis, and they must work with the MPO to provide the design concept and scope of projects in sufficient detail to allow the MPO to perform the regional emissions analysis.

8.3. Determining if exempt projects should be treated as non-exempt (CFR

93.105(c)(iii)): The MPO will identify all projects in the TP/TIP that meet the definition of an exempt project, as defined in the conformity regulations. The MPO will provide a list of these exempt projects to the ICG for review prior to releasing the draft TP/TIP 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, the MPO will notify the project sponsor of this determination and make appropriate changes to the conformity analysis, as required.

8.4. Treatment of non-FHWA/FTA regionally significant projects (CFR

93.105(c)(4)): Any recipient of federal funding is required to disclose to the MPO the design concept and scope of regionally significant projects that do not use FHWA or FTA funds. The MPO will request that INDOT and local agencies identify all such projects prior to conducting a new conformity analysis for the TP and/or TIP. As part of the conformity analysis, the MPO will also include a written response to any significant comment received about whether any project or projects of this type are adequately accounted for in the regional emissions analysis.

8.5. Projects that can advance during a conformity lapse: In the event of a conformity lapse, the MPO will consult with the ICG to identify projects in the TP/TIP that may move forward. The MPO will also consult the ICG on the process for preparing an Interim TP/TIP.

8.6. Addressing activities and emissions that cross MPO boundaries (CFR

93.105(c)(3)): When a regionally significant non-exempt project proposed in another MPO's TP/TIP crosses MPO boundaries, the WCIEDD MPO will review the project with the ICG to determine appropriate methods for addressing the emissions impact of the project in this MPO's conformity analysis, consistent with EPA's conformity regulations.

9. Conflict Resolution (40 CFR 93.105(d)):

Conflicts between state agencies or between state agencies and the MPO that arise during consultation will be resolved as follows:

9.1. A statement of the nature of the conflict will be prepared by the agency with the conflict and agreed upon by the ICG.

9.2. Staff of the affected ICG agencies will meet in a good faith effort to resolve the conflict in a manner acceptable to all parties.

9.3. If the staff cannot successfully resolve the matter, the MPO Executive Director or his/her designee, management officials within state agencies and all other parties to the conflict shall meet to try and resolve differences in a manner acceptable to all parties.

9.4. If the matter is not resolved following the steps outlined above, IDEM has 14 days to appeal to the Governor after INDOT or the MPO has notified IDEM via letter that either party plans to proceed with their conformity decision or the policy that is the source of the conflict. If IDEM appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If IDEM does not appeal to the Governor within 14 days, the MPO or INDOT may proceed with the final conformity determination or policy in dispute. The Governor may delegate his or her role in this process, but not to the head or staff of the state or local air agency, state department of transportation, state transportation commission or board, or the MPO. The 14 day clock for this procedure begins when IDEM signs for the notification letter, which may be personally delivered or sent via certified mail, priority mail or courier delivery service.

10. Public Consultation Procedures (40 CFR 93.105(e))

The MPO will follow its adopted Public Participation Plan, developed in accordance with 23 CFR 450.316(a), when making conformity determinations on transportation plans and programs. This plan establishes a proactive public involvement process which provides the public reasonable access to technical and policy information used in the conformity decision making process, before an actual conformity decision is made. Any charges imposed for public inspection and copying must be consistent with the fee schedule contained in 49 CFR 7.43. ICG agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

LEGAL NOTICE OF PUBLIC HEARING

Indiana Transportation Conformity Process and Procedures State Implementation Plan

Notice is hereby given under 40 CFR 51.102 that the Indiana Department of Environmental Management (IDEM) will hold a public hearing on Tuesday, May 11, 2010. The purpose of this hearing is to receive public comment on the Indiana Transportation Conformity Process and Procedures State Implementation Plan (SIP) and associated materials. The meeting will convene at 6:00 p.m. (local time) in the Indianapolis-Marion County Library-West Indianapolis Branch located at 1216 South Kappes Street, Indianapolis, Indiana. All interested persons are invited and will be given opportunity to express their views concerning the draft documents.

Pursuant to Section 110 of the 1990 Clean Air Act and Title 13 of the Indiana Code, IDEM is submitting a revision to the Indiana Transportation Conformity Process and Procedures SIP. This revision consists of a State and Federal Agency Memorandum of Understanding (MOU), an Interagency Consultation Group Conformity Consultation Guidance document, ten (10) Metropolitan Planning Organization (MPO) specific conformity procedures documents and ten (10) formally adopted MPO Resolutions related to the transportation conformity process. Together, these documents outline the process and procedures for transportation conformity both statewide and within each of the ozone and particulate matter nonattainment and maintenance areas of Indiana.

Copies of the draft documents will be available on or before Friday, April 9, 2010 to any person upon request at the following locations:

- Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center North, 100 North Senate, Room N1003, Indianapolis, Indiana.
- Indianapolis-Marion County Library-West Indianapolis Branch, 1216 South Kappes Street, Indianapolis, Indiana

The draft documents will also be available on the following web page:

<http://www.in.gov/idem/4658.htm>

Oral statements will be heard, but for the accuracy of the record, statements should be submitted in writing. Written statements may be submitted to the attendant designated to receive written comments at the public hearing.

IDEM will also accept written comments through Friday, May 14, 2010. Mailed comments should be addressed to:

Indiana Transportation Conformity Process and Procedures State Implementation Plan
Scott Deloney, Chief
Air Programs Branch, Office of Air Quality – Mail Code 61-50
100 North Senate Avenue

Indiana Department of Environmental Management
Indianapolis, IN 46206-2251

A transcript of the hearing and all written submissions provided at the public hearing shall be open to public inspection at IDEM and copies may be made available to any person upon payment of reproduction costs. Any person heard or represented at the hearing or requesting notice shall be given written notice of actions resulting from the hearing.

For additional information contact Mr. Shawn Seals, at the Indiana Department of Environmental Management, Office of Air Quality, Room N1001, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, IN 46204 or call (317) 233-0425 or (800) 451-6027 ext. 3-0425 (in Indiana).

Individuals requiring reasonable accommodations for participation in this hearing should contact the IDEM Americans with Disabilities Act (ADA) coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management -- Mail Code 50-10
100 North Senate Avenue
Indianapolis, IN 46204-2251

Or call (317) 233-1785 (voice) or (317) 233-6565 (TDD). Please provide a minimum of 72 hours notification.



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

Mitchell E. Daniels Jr.
Governor

Thomas W. Easterly
Commissioner

100 North Senate Avenue
Indianapolis, Indiana 46204
(317) 232-8603
Toll Free (800) 451-6027
www.idem.IN.gov

Mr. Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3950

Re: Indiana Transportation Conformity Process and
Procedures State Implementation Plan

Dear Mr. Mathur:

With this letter the Indiana Department of Environmental Management (IDEM) submits the final Transportation Conformity Process and Procedures State Implementation Plan (SIP) for the State of Indiana. IDEM conducted a public hearing concerning the Transportation Conformity Process and Procedures SIP on **(Insert Public Hearing Date)**. The public comment period concluded on **(Insert Public Comment Closing Date)** and **(Insert Number of Comments Received)** comments were received.

Pursuant to Section 110 of the 1990 Clean Air Act and Title 13 of the Indiana Code, IDEM submits a revision to the Indiana Transportation Conformity Process and Procedures SIP. This revision consists of a State and Federal Agency Memorandum of Understanding (MOU), an Interagency Consultation Group Conformity Consultation Guidance document, ten (10) Metropolitan Planning Organization (MPO) specific conformity procedures documents and ten (10) formally adopted MPO Resolutions related to the transportation conformity process. Together, these documents outline the process and procedures for transportation conformity both statewide and within each of the ozone and particulate matter nonattainment and maintenance areas of Indiana.

The MOUs, Consultation Guidance Document and MPO specific documents were established through extensive consultation among the affected transportation partners in each of the ozone and particulate matter nonattainment and maintenance areas of Indiana. Together, the attachments below fully address the requirements associated with the federal conformity rule (40 CFR Parts 51 and 93).

In order to assist with your review of this SIP amendment, the following documents are enclosed:

Attachment A: State and Federal Agency MOU

Attachment B: Interagency Consultation Group Conformity Consultation Guidance Document

Attachment C: Delaware-Muncie Metropolitan Plan Commission "Resolution of Approval Regarding Transportation Air Quality Conformity Protocol and Procedures" and "Delaware County Transportation Air Quality Conformity Protocol"

Attachment D: Evansville Metropolitan Planning Organization (EMPO) "Resolution Approving MPO Specific Transportation Air Quality Conformity Protocol" and the EMPO "Transportation Air Quality Conformity Protocol"

Attachment E: Indianapolis Metropolitan Planning Organization (IMPO) "Metropolitan Development Commission of Marion County: Resolution No. 09-T-009" and "Central Indiana Transportation Air Quality Conformity Protocol"

Attachment F: Kentuckiana Regional Planning and Development Agency "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"

Attachment G: Michiana Area Council of Governments "Approval of MPO Specific Transportation Air Quality Conformity Procedures: Resolution 20-08" and "Transportation Air Quality Conformity Protocol"

Attachment H: Madison County Council of Governments "Resolution 9-08: Madison County/Delaware County Transportation Air Quality Conformity Protocol and Procedures," "Madison County Transportation Air Quality Conformity Protocol," "Resolution 12-08: Central Indiana MPOs Specific Transportation Air Quality Conformity Protocol and Procedures" and "Central Indiana Transportation Air Quality Conformity Protocol"

Attachment I: Northeastern Indiana Regional Coordinating Council "Approval of MPO Specific Transportation Air Quality Conformity Protocol" and "Transportation Air Quality Conformity Protocol: Conformity Procedures"

Attachment J: Northwestern Indiana Regional Planning Commission "Resolution 08-07: "A Resolution of the Northwestern Indiana Regional Planning Commission to Adopt the Transportation Air Quality Protocol" and "Transportation Air Quality Conformity Protocol: Conformity Procedures"

Attachment K: Ohio-Kentucky-Indiana Regional Council of Governments "Resolution of the Board of Directors of the Ohio-Kentucky-Indiana Regional Council of Governments Concerning the Execution of the Transportation Conformity Consultation Memorandum of Understanding" and "Memorandum of Understanding among the Ohio-Kentucky-Indiana Council of Governments, the Ohio Environmental Protection Agency, the Indiana Department of Environmental Management, the Indiana Department of Transportation, the Miami Valley Regional Planning Commission, the Ohio Department of Transportation, the United States Environmental Protection Agency – Region 5, the Federal Highway Administration – Ohio Division, the Federal Highway Administration – Indiana Division, the Federal Transit Administration – Region 5"

Attachment L: West Central Indiana Economic Development District "Transportation Policy Committee Resolution 031808-04" and "Transportation Air Quality Conformity Protocol: Conformity Procedures"

IDEM requests that the United States Environmental Protection Agency proceed with review and approval of this submittal. If you have any questions or need additional information, please contact Shawn Seals, Senior Environmental Manager, Air Programs Branch, at (317) 233-0425 or SSeals@idem.IN.gov

Sincerely,

Thomas W. Easterly
Commissioner

TWE/sms
Attachments

cc: Pat Morris, U.S. EPA Region 5 (w/ enclosures)
Steve Rosenthal, U.S. EPA Region 5 (w/ enclosures)
Chris Panos, U.S. EPA Region 5 (w/ enclosures)
Shawn Seals, IDEM-OAQ (w/ enclosures)
John Summerhays, U.S. EPA Region 5 (no enclosures)
Ed Doty, U.S. EPA Region 5 (no enclosures)
Cheryl L. Newton, U.S. EPA Region 5 (no enclosures)
John Mooney, U.S. EPA Region 5 (no enclosures)
Scott Deloney, IDEM-OAQ (no enclosures)
Christine Pedersen, IDEM-OAQ (no enclosures)

1 INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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5 IN RE

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8 PROPOSED REVISION TO SECTION 110 OF THE 1990 CLEAN AIR
9 ACT AND TITLE 13 OF THE INDIANA CODE
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14 A public hearing was held before Senior Environmental
15 Manager Shawn Seals, on the 11th of May, 2010, at the
16 Indianapolis-Marion County Library - West Indianapolis
17 Branch, 1216 South Kappes Street, Indianapolis, Indiana,
18 and reported by me, Deborah J. Pearce, Notary Public in
19 and for the County of Hamilton, State of Indiana.
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21
22

23 ACCURATE REPORTING OF INDIANA
24 William F. Daniels Prop. RPR/CP CM
25 12922 Brighton Avenue
Carmel, Indiana 46032
317-848-0088

INDEX OF ATTACHMENTS

1		
2		
3	Notice of Public Hearing	1 sheet front & back
4	Letter to Mr. Mathur	2 sheets front & back
5	Appendix A (MOU)	11 sheets front & back
6	Appendix B Conformity Doc.	14 sheets front & back
7	Appendix C (DMMPC)	8 sheets front & back
8	Appendix D (EMPO)	9 sheets front & back
9	Appendix E (IMPO)	9 sheets front & back
10	Conformity Guidance Aug 2007	13 sheets front & back
11	Appendix F (KIPDA)	19 sheets front & back
12	Appendix G (MACOG)	9 sheets front & back
13	Appendix H (MCCOG)	16 sheets front & back
14	Appendix I (NIRCC)	10 sheets front & back
15	Appendix J (NIRPC)	9 sheets front & back
16	Appendix K (OKI)	15 sheets front & back
17	Appendix L (WCIEDD)	9 sheets front & back
18	Hearing Opening Statements	3 sheets front & back
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1 MR. SEALS: This is a public hearing to
2 accept comments on the State Implementation Plan
3 submittal which shall incorporate a State and Federal
4 Agency Memorandum of Understanding, an Interagency
5 Consultation Group Conformity Consultation Guidance
6 document, ten (10) Metropolitan Planning Organization
7 (MPO) specific conformity procedures documents and ten
8 (10) formally adopted MPO Resolutions related to the
9 transportation conformity process.

10 Together, these documents outline the
11 process and procedures for transportation conformity
12 both statewide and within each of the ozone and
13 particulate matter nonattainment and maintenance areas
14 of Indiana, and address the requirements associated with
15 the federal conformity rule which is found in Title 40
16 of the Code of Federal Regulations (CFR) and detailed in
17 Parts 51 and 93.

18 This hearing is being held to conform
19 specifically to the Public Hearing provisions in 40 CFR
20 Part 51 regarding public hearings for State
21 Implementation Plan submittals.

22 My name is Shawn Seals. I am a Senior
23 Environmental Manager, with a focus on transportation
24 and air quality, with the Indiana Department of
25 Environmental Management, and I have been appointed to

1 act as hearing officer. Notice of the time and place of
2 the hearing was given, as provided by law, by
3 publication in the Indianapolis Star, Indianapolis,
4 Indiana.

5 The Indiana Department of Environmental
6 Management's Office of Air Quality through cooperation
7 and consultation with the Indiana Department of
8 Transportation, the United States Environmental
9 Protection Agency, the Federal Highway Administration
10 and the Federal Transit Administration has prepared a
11 Memorandum of Understanding that outlines the procedures
12 for interagency consultation relating to transportation
13 conformity process and procedures specific to state and
14 federal agencies, along with similar MPO specific
15 process and procedure documents for local areas.

16 In addition, Indiana Department of
17 Environmental Management's Office of Air Quality,
18 through cooperation and consultation with all affected
19 parties developed the Interagency Consultation Group
20 Conformity Consultation Guidance Document to set basic
21 guidelines for standard process and procedures to be
22 followed by affected parties in the transportation
23 conformity process. I will provide a brief background
24 on these documents later during this meeting.

25 The purpose of this public hearing is to

1 provide interested persons an opportunity of offer
2 comments to the state regarding the Indiana
3 Transportation Conformity Process and Procedures State
4 Implementation Plan submittal. Appearance blanks have
5 been distributed in the hearing room for all those
6 desiring to be shown appearing on the record in this
7 case. If you have not already filled out the form,
8 please do so, and indicate if you are appearing for
9 yourself or on behalf of a group or organization, and
10 identify such group or organization.

11 Also, note the capacity in which you appear,
12 such as attorney, officer, or authorized spokesperson.
13 Any person who is heard or represented at this hearing,
14 or who requests a notice, may be given written notice of
15 the final action taken on this State Implementation Plan
16 submittal.

17 Please indicate on the appearance card if
18 you wish to receive this notification. When appearance
19 cards have been completed, they should be handed to me,
20 and I will include them with the official record of this
21 proceeding.

22 Oral statements will be heard, but written
23 statements may be handed to me or mailed to the Office
24 of Air Quality on or before close of business on
25 May 14, 2010.

1 A written transcript of this hearing is
2 being made. The transcript will be open for public
3 inspection and a copy of the transcript may be available
4 to any person upon payment of the copying costs..

5 After the conclusion of this public hearing,
6 I will prepare a written report summarizing the comments
7 received on this hearing and recommended changes which
8 may need to be made to these documents. I would also
9 like to introduce the following documents into the
10 record: The notice for this public hearing being held
11 here today, and the Indiana Transportation Conformity
12 Process and Procedures State Implementation Plan cover
13 letter to the United States Environmental Protection
14 Agency.

15 Finally, I would like to briefly go over the
16 intent of these documents and the general
17 responsibilities of the affected parties in the
18 transportation conformity process.

19 The Indiana Department of Environmental
20 Management is the State agency responsible for air
21 quality planning. Associated responsibilities of the
22 Indiana Department of Environmental Management include
23 the identification of the various sources of air
24 pollutants, including mobile sources, and the
25 development of the State Implementation Plan.

1 The State Implementation Plan outlines the
2 control strategies for maintaining and improving air
3 quality within national ambient air quality
4 nonattainment areas. The Indiana Department of
5 Transportation is the State agency responsible for
6 state-wide transportation planning and project
7 implementation, and is a key stakeholder in the
8 transportation planning and conformity process across
9 Indiana.

10 The Federal Highway Administration and
11 Federal Transit Administration are the federal agencies
12 responsible for approving the Indiana and Kentucky
13 Statewide Transportation Improvement Programs. The
14 Federal Highway Administration and the Federal Transit
15 Administration are active participants in the regional
16 transportation planning and conformity processes and are
17 responsible for making a formal conformity determination
18 regarding the region's Transportation Plan and
19 Transportation Improvement Program.

20 The United States Environmental Protection
21 Agency is also a participant in the regional
22 transportation planning and conformity process and
23 provides comment to the Federal Highway Administration
24 and Federal Transit Administration regarding the
25 regional conformity analysis prior to the issuances of a

1 federal conformity finding.

2 The United States Environmental Protection
3 Agency is also the federal agency responsible for
4 reviewing and approving the State Implementation Plan.
5 The Delaware-Muncie Metropolitan Plan Commission,
6 Evansville Metropolitan Planning Organization,
7 Indianapolis Metropolitan Planning Organization,
8 Kentuckiana Regional Planning and Development Agency,
9 Michiana Area Council of Governments, Madison County
10 Council of Governments, Northeastern Indiana Regional
11 Coordinating Council, Northwestern Indiana Regional
12 Planning Commission, Ohio-Kentucky-Indiana Regional
13 Council of Governments, and West Central Indiana
14 Economic Development District are the local
15 transportation planning agencies responsible for
16 transportation planning and project implementation in
17 their areas.

18 In short, transportation conformity is the
19 process to assess the compliance of a transportation
20 plan, transportation improvement program, or
21 transportation project with the air quality State
22 Implementation Plan.

23 A conformity determination is based on the
24 consistency between the applicable emissions estimates
25 of the transportation plan and/or program and the Motor

1 Vehicle Emission Budget emissions included in the most
2 recently approved air quality State Implementation Plan.

3 If the emissions estimates of the
4 transportation plan, and/or program are lower than those
5 detailed in the approved air quality State
6 Implementation Plan, then a formal conformity finding
7 can be processed by the Federal Highway Administration
8 and/or the Federal Transit administration.

9 Together, the documents contained within
10 this State Implementation Plan submittal identify the
11 interagency consultation process and procedures for the
12 review and determination of conformity for
13 transportation related plans, programs, and projects for
14 nonattainment areas across Indiana that do not meet
15 current national ambient air quality standards.

16 These documents also identify the
17 interagency consultation procedures for the development
18 of applicable air quality State Implementation Plans.

19 Furthermore, they outline the following in
20 detail: The roles and responsibilities of each agency
21 throughout the transportation planning and conformity
22 processes; a description of where opportunity for public
23 involvement is to be provided in the transportation and
24 air quality planning processes; and the process and
25 procedures for the resolution of conflicts among the

1 affected agencies.

2 This concludes my comments regarding the
3 Indiana Transportation Conformity Process and Procedures
4 State Implementation Plan. This hearing is now open for
5 public comment. Are there any public comments?

6 With no comments being voiced, these
7 proceedings are hereby concluded, and this hearing is
8 adjourned at 6:10 p.m.

9
10 (WHEREUPON, at 6:10 p.m., May 11th, 2010,
11 this hearing concluded for the day.)

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1 STATE OF INDIANA)
2) SS:
3 COUNTY OF HAMILTON)

4

5 I, Deborah J. Pearce, a Notary Public in and for
6 the County of Hamilton, State of Indiana at large, do
7 hereby certify:

8

9 That I reported to the best of my ability in
10 machine shorthand and typewriting all of the words
11 spoken by all parties in attendance during the course of
12 the hearing and/or submitted in writing;

13

14 That I later reduced my shorthand notes into the
15 foregoing typewritten transcript form, which typewritten
16 transcript is a true record to the best of my ability of
17 the hearing;

18

19 That I am a disinterested person in this cause of
20 action; that I am not a relative or attorney of either
21 party, or otherwise interested in the event of this
22 action, and I am not financially interested in this
23 action.

24

25 IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my notarial seal this 11th day of May, 2010.

26

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29

30

31 My Commission Expires:
32 September 7, 2017
33 County of Residence:
34 Hamilton
35

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT AGENCY POLICY	COVERAGE: Agency-wide	POLICY NUMBER: A-017-OEA-08-P-R2
	AUTHORIZED: Thomas W. Easterly, Commissioner	
SUBJECT: PUBLIC RECORDS REQUEST POLICY	SUPERSEDES: A-017-OEA-08-P-R1	Office: Office of External Affairs
	EFFECTIVE: April 1, 2006	RENEWED/REVISED: July 15, 2008

1.0 PURPOSE

This policy is to ensure the timely and complete response to Agency public records requests related to the conduct or administration of the Agency's business. The Indiana Access to Public Records Act states, "providing persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide information."

2.0 SCOPE

This policy applies to all Agency staff.

3.0 SUMMARY

This policy is to:

- A. Provide uniform procedures applicable to all Agency staff for managing, collecting, organizing, cataloging and producing public records in response to a public records request.
- B. Ensure that all responsive records are identified, organized and properly managed for each public records request.
- C. Ensure the appropriate review of Agency files.

4.0 DEFINITIONS

- 4.1. "Access to Public Records Act (APRA)" - The Indiana Access to Public Records Act found at IC 5-14-3-1 et seq. requires that public agency records be made available for public inspection and copying upon request unless the record fits a specific, enumerated exemption from public disclosure found in IC 5-14-3-4.
- 4.2. "Accounting Office" - The Accounting Office in the Office of External Affairs.
- 4.3. "Agency" - The Indiana Department of Environmental Management (IDEM).
- 4.4. "Agency Central File Room" - The central repository (located in the Indiana Government Center Complex) for public files for program areas of the Agency.
- 4.5. "Agency Central File Room Director" - The Agency's Director of the Central File Room in the Office of External Affairs.
- 4.6. "Agency Contractor" - A non-Agency entity acting under contract on behalf of IDEM.
- 4.7. "Agency staff" - Any employee or representative of the Indiana Department of Environmental Management including regular employees, temporary employees, contractors and interns.
- 4.8. "Assistant Commissioner" - An Assistant Commissioner in the Indiana Department of Environmental Management.
- 4.9. "Cashier's Office" - The Agency's Cashier's Office located in the Accounting Office in the Office of External Affairs.
- 4.10. "Commissioner" - The Commissioner of the Indiana Department of Environmental Management.
- 4.11. "Confidential" - Records identified by Indiana's Access to Public Records Act as exempt from public disclosure requirements. Records that may be kept confidential by the Agency are

listed at IC 5-14-3-4.

- 4.12. "Copy" -- The reproduction of an original record. This includes transcribing by handwriting, photocopying, xerography, duplicating machine, duplicating electronically stored data onto a disk, tape, drum or any other medium of electronic data storage, and reproducing by any other means.
- 4.13. "Deliberative" -- Involved in or characterized by deliberation, discussion and examination pursuant to IC 5-14-3-4(b)(6).
- 4.14. "Disclosable records" -- Agency records that are not exempt from public disclosure under the APRA (See also Non-disclosable records).
- 4.15. "Discretionary Exemptions" -- Those exemptions from disclosure listed in IC 5-14-3-4(b) which are non-disclosable at the discretion of the Commissioner or Assistant Commissioner.
- 4.16. "Established Workstation" - The Agency employee's officially assigned work site.
- 4.17. "External communications" -- Written records, including electronic mail, which are sent to or received from outside the Agency, its contractors, or other state, local or Federal governmental entities that are working with or on behalf of the Agency on the subject matter of the communication.
- 4.18. "External communications claimed as confidential" -- External communications that are either submitted to the Agency under a claim of confidentiality consistent with the applicable program rule (See 326 IAC 17.1; 327 IAC 12.1; and 329 IAC 6.1) or are subject to any IDEM or U.S. Environmental Protection Agency Confidentiality Agreement.
- 4.19. "Information Technology Office" - The Agency's Information Technology Office in the Office of External Affairs.
- 4.20. "Indiana Office of Technology (IOT)" -- An agency of Indiana State Government responsible for technology infrastructure and desktop support for IDEM.
- 4.21. "Inspect" - To view or to manually transcribe or make notes, abstracts or memoranda. In the case of tape recordings or other audible public records, to listen and manually transcribe or duplicate, or make notes, abstracts or other memoranda from them. In the case of electronically stored data to manually transcribe and make notes, abstracts or memoranda or to duplicate the data onto a disk, tape, drum or any other medium of electronic storage.
- 4.22. "Inter-Agency or Intra-Agency communications" -- This includes all communication among Agency staff and all communications between Agency staff and its contractors, or other state, local or Federal governmental entities that are working with or on behalf of the Agency on the subject matter of the communication. Any internal communication that includes any external recipients is not an internal communication. Internal communications may be electronic, oral or written.
- 4.23. "Inter-Agency or Intra-Agency communications claimed as deliberative" - All internal communications that are non-disclosable and exempt from public disclosure under the APRA.
- 4.24. "Non-disclosable records" - As used in IC 5-14-3-6, non-disclosable records include public records that are exempt from the public disclosure requirements of the APRA. Non-disclosable records include:
 - A. Internal communications which are deliberative in nature or express opinions and are used for decision-making (i.e., draft documents or staff reviews).
 - B. Diaries, journals or other personal notes.
 - C. Documents made confidential by State or Federal Law, or rules of the Indiana Supreme Court.
 - D. An individual's Social Security number.
 - E. Documents containing trade secrets or confidential financial information received upon request from a person, when an appropriate claim of confidentiality is made.
 - F. Records containing communications to Office of Legal Counsel (OLC) staff attorneys, which are communicated for the purpose of rendering legal advice or contain work

- product of an attorney representing the Agency in pending or anticipated litigation.
- G. Records submitted to the Agency's Voluntary Remediation Program and declared confidential by IC 13-25-5-2(b) until a voluntary remediation agreement is signed.
 - H. Records of the Agency's Compliance and Technical Assistance program that identify or describe an individual facility or operation are confidential under IC 13-29-3-4.
 - I. Any other exceptions listed in IC 5-14-3-4(a) or IC 5-14-3-4(b).
- 4.25. "Office of the Indiana Attorney General (OAG)" – The attorneys and staff from the Indiana Office of the Attorney General assigned to represent the Agency.
 - 4.26. "Office of Legal Counsel (OLC)" – The Office of Legal Counsel within the Agency.
 - 4.27. "Person" - An individual, a corporation, a limited liability company, a partnership, an unincorporated association or a governmental entity.
 - 4.28. "Public Record" - Any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with the Agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data or any other material, regardless of form or characteristics. A public record may include electronic mail, attachments to electronic mail, and other electronic records.
 - 4.29. "Public Records Coordinator" – The person designated by the Assistant Commissioner or Regional Office Director to manage public records for their respective program area(s).
 - 4.30. "Records Request Workgroup" – A workgroup assembled by the Agency's Central File Room Director to ensure that all responsive records are identified, organized and reviewed as appropriate.
 - 4.31. "Records requestor" – A person or entity who makes a request to view or copy public records.
 - 4.32. "Regional Office Director" – A Regional Office Director in the Office of External Affairs.
 - 4.33. "Response" – The action taken by the Agency staff in regards to a public records request. At minimum, Agency staff must acknowledge receipt of the request within the specified timeframe, as required by law.
 - 4.34. "Responsive record" – A record that is within the scope of the language of the request for records under APRA.
 - 4.35. "Supervisor" – The Agency manager to whom the Agency staff reports.
 - 4.36. "State" – The State of Indiana.
 - 4.37. "Virtual File Cabinet" – The Agency's electronic file document management system. This system will capture, store, file, index, redact, reassemble and securely access electronic documents of all types both received and created by the various programs within the Agency.

5.0 ROLES

- 5.1. The Commissioner may:
 - A. Have final approval over the records request responses from the Agency.
- 5.2. The Assistant Commissioner or Regional Office Director shall:
 - A. Designate a Public Records Coordinator(s) for their respective office whose priority will be to coordinate recovering office records responsive to a request for public records.
 - B. Identify all current and past Agency employees who have or had records responsive to the public records request and provide a list of employees to the Central File Room Director.
 - C. Ensure that all Agency staff with records responsive to the applicable request have responded to each records request in accordance with this policy.
 - D. Indicate whether a confidentiality agreement or other claim of confidentiality exists which may be related to the records request.
 - E. Be responsible for assigning Agency staff with filing, organizing and managing records from their respective offices based upon the approved record retention schedules.

- 5.3. The Accounting Office shall:
- A. Have the Cashier's Office receive and document the daily revenue from copying of public records.
 - B. Assist with the public records requests for the Agency phone records.
 - C. Assist in coordinating with the Indiana Office of Technology (IOT) to ensure all responsive phone records are provided.
- 5.4. The Agency Central File Room Director shall:
- A. Coordinate with the Agency Record Coordinators, the Records Request Workgroup and the Office of Legal Counsel to ensure that each records request is met in a complete and organized manner.
 - B. Respond to the records request within the proper time period and provide information regarding how or when the Agency will comply with the request.
 - C. Receive Agency public record requests and assist in determining the scope, extent and timeframe of the requests. Maintain a chronology of each revision that includes the content of the revision.
 - D. Scan and e-mail the records request to the appropriate Assistant Commissioners, Deputy Assistant Commissioners, Branch Chiefs and Record Coordinators. Provide the timeline for Agency staff to retrieve, organize and provide the requested records and/or e-mails.
 - E. Notify appropriate Agency staff and Record Coordinators of any revisions or modifications to the records request.
 - F. Assist in collecting, organizing, cataloging and tracking records provided by Agency staff in response to a request.
 - G. Track the receipt of responsive records from Agency staff and return records to Agency staff for additional processing if the records are not provided in a manner consistent with this policy.
 - H. Maintain a copy of the signed cover letter, the disclosable public records provided to the records requestor and a copy of the non-disclosable records.
 - I. Assist in providing Agency staff training on public records requests.
 - J. Ensure the public records response and disclosable records are sent to the records requestor.
- 5.5. The Agency Central File Room staff shall:
- A. Locate Agency public records upon request.
 - B. Coordinate records requests involving multiple programs within the Agency.
 - C. Copy or scan documents for a public requestor to protect the integrity of Agency public record files.
 - D. Copy public records requests in the order they are received in the Agency Central File Room.
 - E. Notify the records requestor that reproduced materials will be held for only fourteen (14) days.
 - F. Provide daily the documentation and revenue from the copying of public records to the Agency's Cashier's Office.
 - G. Notify Agency Central File Room Director and appropriate Supervisory staff immediately of problems regarding public records requests.
 - H. Submit for review to the Agency Central File Room Director any public records requests and associated files that may be subject to an exemption from disclosure.
- 5.6. The Agency Information Technology Office shall:
- A. Maintain the electronic document management system (the Virtual File Cabinet).
 - B. Assist with requests for Agency electronic mail records of current and past Agency staff.
 - C. Assist in coordinating with the Indiana Office of Technology (IOT) to ensure all responsive records are provided.
- 5.7. Agency staff shall:
- A. Routinely organize their electronic mail so they may be timely in their responses to public records requests.
 - B. Retrieve and provide to the Central File Room Director or Records Coordinator, records responsive to the records request that are organized in the manner required in this policy.

- C. Carefully review the request for public records and only retrieve records responsive to the request. Any questions about whether a record is responsive to a request should be directed to the Office of Legal Counsel.
 - D. Separate their responsive electronic mail or other communications into two (2) groups to avoid the production of duplicate records.
 - 1) The first group is:
 - a. Records sent by IDEM staff to anyone (inside or outside IDEM) or received by IDEM staff from outside IDEM.
 - 2) The second group is:
 - a. Records received by IDEM staff from other IDEM staff.
 - E. Organize and clearly label the records in the first group consistent with sections F, G and H below.
 - F. Separate the first group of records into Intra- or Inter-Agency communications and communications with persons outside of IDEM, its contractors, or its governmental partners. Please note, some records IDEM staff send outside the Agency or received from outside the Agency may be considered Intra-Agency if they are to or from an Agency contractor or a State, local or Federal government entity that is working with or acting on behalf of IDEM on the subject matter of the communication.
 - G. Separate and label from any electronic mail received from outside IDEM, its contractors or its governmental partners that were claimed as confidential.
 - H. Review your Inter-Agency and Intra-Agency communication and label all that are exempt from public disclosure citing the exemption from disclosure that applies on a separate piece of paper. If not certain of the exemption, include a statement of why the record should be exempt from public disclosure on a separate piece of paper and not directly on the record itself.
 - I. Direct any questions about the characterization of any record and where it should be placed to the Office of Legal Counsel.
 - J. Ensure that any e-mail attachments are attached to the responsive e-mail.
 - K. Provide all responsive records to the Central File Room Director or Records Coordinator in the time period and format requested (electronic or paper). The records shall be organized and labeled according to this policy and the Public Records Request Standard Operating Procedure.
 - L. Upon termination of employment with the Agency, deliver all records to their Supervisor.
 - M. Make electronic records accessible to their Supervisor before going on an extended leave.
- 5.8. Agency staff who receive a public records request by mail, telephone call, facsimile or by electronic media shall:
- A. Ensure that the request indicates the date received by the Agency.
 - B. Immediately send the request to the Agency Central File Room Director who will determine and assist in providing a timely response to the request.
 - C. Ensure that all information related to the transmittal is maintained with the request (i.e., envelope, certified mail receipt, fax cover sheet, etc.).
- 5.9. Agency staff who request public records from the Agency Central File Room shall:
- A. Complete and submit the outslip for each file requested (See Appendix A).
 - B. Show their State identification badge when working in or requesting public records from the Agency Central File Room.
 - C. Not transfer the original public record to other Agency staff or a public record requestor.
 - D. Return the file to the Central File Room, initial and date as returned where indicated on the outslip.
 - E. Use the copiers in their respective offices or the Agency Central File Room to copy or scan the documents that are critical to their work activity. Files that are scanned may be e-mailed to their e-mail account. Copying or scanning is to be completed by the Agency staff requesting the file, not by staff in the Agency Central File Room.
 - F. Only be allowed to remove public records from the Agency Central File Room if their established workstation is located in the Indiana Government Center Complex. Agency staff whose established workstation is not located in the Indiana Government Center

Complex shall be able to view and copy the public records, but shall not be able to remove original public records from the Government Center Complex.

- G. Return public records to the Agency Central File Room in the condition and order they were received.
- H. Check out files for a maximum of a 30 (thirty) day period. An additional thirty (30) day period may be requested with the completion of another outslip.
- I. Return all files that are marked "confidential" in person to an Agency Central File Room staff member. All confidential files shall be clearly marked as "confidential" and secured in a red folder. Each day, confidential files shall be returned to the Agency Central File Room by 4:30 pm or secured in a locked file cabinet.

5.10. The Office of Legal Counsel (OLC) shall:

- A. Assign staff in the Office of Legal Counsel to review public records requests that involve Agency legal issues.
- B. Assist in determining the scope, extent and timeframe of a public records request and if further clarification is needed from the records requestor.
- C. Refer appropriate issues to the Indiana Office of the Attorney General.
- D. Work with Agency staff to elicit all important facts concerning the public records request and help ensure that Agency staff understands the pertinent laws, regulations, policies and procedures related to the public records request.
- E. Determine whether any exemptions from disclosure may apply under IC 5-14-3-4.
- F. Determine the composition and develop a privilege log if requested with the assistance of applicable program staff.
- G. Assign OLC staff for any records that need redaction.
- H. Assist in providing training to Agency staff on public records requests.
- I. Prepare and sign the public records denial letter if public records are being denied.

5.11. The Public Records Coordinator shall:

- A. Obtain from the Assistant Commissioner or designee, the list of all current and past program staff that may be reasonably anticipated to have responsive records associated with a particular records request.
- B. Understand the basic requirements of public records laws, related Agency policies and their respective Agency program staff with records responsive to a request.
- C. Organize the records responsive to a public records request involving their respective program office, section, branch or Regional Office prior to submitting to the Central File Room Director.
- D. Work with other Public Records Coordinators if the request involves more than one (1) Agency program.
- E. Ensure coordination with the Central File Room staff so that an initial response is made in the appropriate timeframe and manner.
- F. Submit for review to the Agency Central File Room Director any public records request and their associated files that may be subject to an exemption from disclosure.
- G. Notify their appropriate Supervisory staff of problems with their respective public records requests.
- H. Ensure that information provided for a public records request does not contain Social Security numbers.

5.12. The Records requestor shall:

- A. Provide enough description and detail about the information requested to enable the Agency to accurately identify and locate the items requested.
- B. Cooperate with the Agency's reasonable efforts to clarify the type or amount of information requested.
- C. Complete the Indiana Department of Environmental Management Outslip for each file requested (See Appendix A).
- D. Use the Agency Central File Room computers for viewing Agency records only. External electronic storage devices are prohibited on Agency Central File Room computers.
- E. Complete a Photocopier/Scanner Equipment Waiver and schedule an appointment with the Central File Room Director before bringing in any equipment for the purpose of copying and/or scanning of public documents (See Appendix C).

5.13. The Records Review Workgroup shall:

- A. Assist in determining Agency staff with responsive records.
- B. Review the final records response package prior to submittal to the records requestor.
- C. Recommend procedures for resolving record request issues.

5.14. The Supervisor shall:

- A. Train employees to ensure the appropriate management and organization of e-mail.
- B. Manage, file and retrieve Agency records responsive to a public records request of their former Agency staff and any Agency staff on an extended leave.

6.0 POLICY

6.1. The following applies to a public records request:

- A. Any person may inspect, have copied on paper or view on the public computers, the public records of the Agency during regular business hours. These hours are 8:30 am to 4:30 pm, Monday through Friday, except State holidays.
- B. There shall be no charges assessed for the inspection of existing records, including viewing of documents through the electronic document management system (the Virtual File Cabinet).
- C. Public records requests may be received by Agency staff by electronic mail, telephone, facsimile, letter or in person.
- D. The Agency is not required to provide the information in a format different from that in which it currently maintains the information.
- E. The Agency is not required to create any records in response to a public records request.
- F. A public request may not be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute or the material is deemed "confidential."
- G. A public record may not be removed from the Agency Central File Room by a records requestor.
- H. Public records requests shall be copied in the order they are received.
- I. Original records may not be altered.

6.2. The following applies to charges for copying Agency public records:


- A. There shall be no charge for copying records of one-hundred (100) pages or less, e-mailing electronic documents or for the retrieval of records from the electronic management system (the Virtual File Cabinet).
- B. There shall be no charge for duplication of records if the records request is from a representative of:
 - 1. The government of the United States,
 - 2. The government of a state or political subdivision of a state,
 - 3. An agency of the United States,
 - 4. A state or a political subdivision of a state,
 - 5. Any interstate governmental agency, and
 - 6. Any "public agency" as defined in IC 5-14-3-2(1).
- C. A per page cost of ten cents (\$.10) will be charged for copied documents after the first one-hundred (100) pages.
- D. A charge of \$5.00 per compact disc, digital video disc or diskette is assessed for copying of public documents onto electronic storage medium.
- E. The fee for copying non standard-sized documents (larger than 11.5" x 17") is seventy cents (\$.70) per page.
- F. Payment by the records requestor is due upon receipt of the public documents.
- G. Postage will be charged if the public records request is sent by overnight parcel service.
- H. Fees paid shall be paid by cash, check or money order, with the check or money order being made payable to "Cashier, Indiana Department of Environmental Management." When mailed, mail to Cashier's Office Mail Code 50-10C, Indiana Department of Environmental Management, 100 N. Senate Avenue, Indianapolis, IN 46204.
- I. The records requestor will be provided with a receipt for payment of records.

- J. If orders for copies of records are not claimed, a charge for the second reproduction in addition to the original charge for the first reproduction will be assessed. Prepaid fees will be forfeited if the copied materials are not picked up within fourteen (14) days.
- 6.3. The following applies to the initial response of a public records request:
 - A. If the records requestor is physically present in the Agency or makes the request by telephone or by e-mail, the Agency must respond within twenty-four (24) hours after any Agency employee receives the request.
 - B. If a request for public records is mailed or sent by facsimile, the Agency must respond within seven (7) days of the receipt of that request.
 - C. The acknowledgement of receipt shall be documented by the Agency.
- 6.4. The following applies to the copying of records where equipment, materials and personnel are provided by the records requestor:
 - A. The records requestor may use their own equipment, materials and personnel to scan public documents in the Agency Central File Room.
 - B. The records requestor shall have completed the Photocopy/Scanner Equipment Waiver (See Appendix B) that has been pre-approved by the Agency Central File Room Director before equipment can be brought into the Agency Central File Room.
 - C. The public documents being copied or scanned can not be removed from the Agency Central File Room.
- 6.5. If a public record contains disclosable and non-disclosable information, the Agency shall, upon receipt of a request under APRA, separate the material that may be disclosed and make it available for inspection and copying (IC 5-14-3-6(a)).
- 6.6. Records must be produced in a reasonable period, considering the circumstances of the requested public records. These circumstances include the scope of the requests (whether it is broad or narrow), the location and organization of the requested records, and whether the requested records must be reviewed to remove or redact non-disclosable records or portions of records.
- 6.7. The Agency shall gather any responsive records and review those records to determine whether any mandatory or discretionary exceptions apply to disclosure under IC 5-14-3-4.
- 6.8. A records request denial for disclosure must be made in writing or by facsimile and shall include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record and the name and the title or position of the Agency staff responsible for the denial.

7.0 REFERENCES

- 7.1. IC 5-14-3, Access to Public Records
- 7.2. IC 13-14-11, Records of the Department and Boards
- 7.3. Accounting and Uniform Compliance Guidelines Manual for State Agencies, Chapter 15 -- Public Records, Indiana State Board of Accounts, March 2007
- 7.4. Handbook on Indiana's Public Access Laws, Office of the Public Access Counselor, December, 2003
- 7.5. Agency Policies:
 - A. Agency Staff Receiving Legal Notices of Legal Requests, August 1, 2007
 - B. Correspondence Responsiveness Policy, December 1, 2006
 - C. E-Mail Management Policy, February 1, 2007
 - D. Litigation Hold Policy, October 18, 2005
 - E. Social Security Confidentiality Policy, August 15, 2007

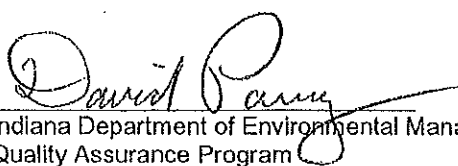
8.0 SIGNATURES



Thomas W. Easterly, Commissioner,
Indiana Department of Environmental Management

JULY 3, 2008
Date

This policy is consistent with Agency requirements.



Indiana Department of Environmental Management
Quality Assurance Program
Planning and Assessment

7/7/2008
Date



Indiana Department of Environmental Management Outslip

Rev: 01/01/08

Requestor Information

Date of Request: _____	Date Request Completed: _____
Date Checked Out: _____	Return Due Date: _____
Name - Program (Optional): _____	Phone (Optional): _____
Address/Office (Optional): _____	
City/State (Optional): _____	Zip Code (Optional): _____
<input type="checkbox"/> Public Request _____	<input type="checkbox"/> Public Agency Request _____
<input type="checkbox"/> IDEM Employee Request (IDEM Employees are required to fill in name, office and phone information)	
<input type="checkbox"/> Confidential File (Confidential Files are not allowed to be physically removed from the Central File Room)	

Records Requested

<input type="checkbox"/> Office of Air Quality County: _____ Facility/Site Name: _____ Permit #: _____	<input type="checkbox"/> Office of Water Quality County: _____ Facility/Site Name: _____ Permit #: _____
<input type="checkbox"/> Office of Land Quality County: _____ Site Name: _____	
<input type="checkbox"/> CERCLIS ID Number _____	
<input type="checkbox"/> Confine Feeding Operations (CFO/CAFO) Log # _____	
<input type="checkbox"/> Defense Environmental Restoration Program Number (DERP) _____	
<input type="checkbox"/> Department of Defense (DOD) _____	
<input type="checkbox"/> Environmental Spill(s) Year and County _____	
<input type="checkbox"/> Excess Liability Trust Fund (ELTF) _____	
<input type="checkbox"/> Immediate Removal Site(s) _____	
<input type="checkbox"/> Land Application _____	
<input type="checkbox"/> Leaking Underground Storage Tanks (LUST) FID # _____	
<input type="checkbox"/> Underground Storage Tanks (UST) FID # _____	
<input type="checkbox"/> Resource Conservation Recovery Act (RCRA) _____	
<input type="checkbox"/> Septic Hauler(s) _____	
<input type="checkbox"/> State Cleanup Site(s) _____	
<input type="checkbox"/> Superfund Site(s) _____	
<input type="checkbox"/> Voluntary Remediation Program (VRP) _____	

For Internal Use Only

Date Returned _____ Initial _____