



RESOLUTION 23-04

A RESOLUTION OF THE NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION APPROVING UPDATED TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL AND INTERAGENCY CONSULTATION PROCEDURES March 16, 2023

WHEREAS, the Northwestern Indiana Regional Planning Commission, hereafter referred to as “the Commission” is the regional transportation agency for the Metropolitan Planning Area of Lake, Porter, and LaPorte Counties, including portions of the Chicago, IL–IN and the Michigan City–La Porte, IN–MI Urbanized Areas pursuant to 23 CFR 450 and 49 CFR 613; and

WHEREAS, the Commission and the Indiana Department of Environmental Management are collectively responsible for developing and implementing various portions of the federal air quality plans in the Metropolitan Planning Area of Lake, Porter, and LaPorte Counties, including portions of the Chicago, IL–IN and Michigan City–La Porte, IN–MI Urbanized Areas; and

WHEREAS, prior to adopting or amending the long-range Regional Transportation Plan (RTP) and Transportation Improvement Plan (TIP), the Commission must first determine that these plans and programs conform to the state and federal air quality plan for Lake, Porter, and LaPorte Counties, including portions of the Chicago, IL–IN and Michigan City–La Porte, IN–MI Urbanized Areas termed the State Implementation Plan (SIP) using procedures established by the United States Environmental Protection Agency (U.S. EPA); and

WHEREAS, the five 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 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.

NOW, THEREFORE, BE IT RESOLVED that the Northwestern Indiana Regional Planning Commission approves the Northwestern Indiana Regional Planning Commission Transportation Air Quality Conformity Protocol and Interagency Consultation Procedures.

Duly adopted by the Northwestern Indiana Regional Planning Commission this sixteenth day of March, 2023.

A handwritten signature in black ink, appearing to read "Richard Hardaway", written over a horizontal line.

Richard Hardaway
Chairperson

ATTEST:

A handwritten signature in black ink, appearing to read "Sue Lynch", written over a horizontal line.

Sue Lynch
Secretary

ATTACHMENT A:
The NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION
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.

The NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION TRANSPORTATION AIR QUALITY CONFORMITY PROTOCOL

Interagency Consultation Group 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 Environmental Management
INDOT - Indiana Department of Transportation
INSTIP - Indiana Statewide Transportation Improvement Program
LOS - Level of Service
MPO - Metropolitan Planning Organization
MVEB - Motor Vehicle Emissions Budget
NEPA - National Environmental Policy Act
NIRPC - Northwestern Indiana Regional Planning Commission
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

The procedures outlined in this document implement the interagency consultation process as required in 93.105(b) for the Northwestern Indiana Regional Planning Commission (NIRPC), Metropolitan Planning Organization (MPO) in Lake, Porter, and LaPorte Counties (including portions of the Chicago, IL-IN and Michigan City-La Porte, IN-MI Urbanized Areas), and include procedures to be undertaken by NIRPC, Indiana Department of Transportation (INDOT), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Indiana Department of Environmental Management, United States 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).

Transportation conformity is the process to assess the compliance of a Transportation Plan (TP), Transportation Improvement Program (TIP), or transportation project with the air quality State Implementation Plan (SIP). A conformity determination is based on the conformity regulations

in 40 CFR Part 93 and consistency between the applicable emissions budgets of the TP and/or the TIP with the SIP.

Additional details on consultation are contained in the Indiana guidance document on transportation conformity “Interagency Consultation Group Conformity Consultation Guidance, August 2022”. 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) as part of this MOU 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, US EPA, FTA
- State Agencies: INDOT, IDEM, other multi-state regional state agencies
- Regional planning agencies: NIRPC
- Local transit agencies (where appropriate)
- Local air agencies (where appropriate)
- Transit operators

The NIRPC will maintain a directory for the current membership agencies of the ICG. The ICG agencies should establish the practice of having at least 1 staff member who can serve as an alternate contact primary is unavailable. These agencies are responsible to notify ICG upon individual contact changes.

Initial Interagency Consultation Group Meeting

The NIRPC is responsible for initiating the ICG consultation when a new conformity demonstration is being initiated due to changes to the TP and/or TIP.

The Initial ICG Meeting (typically a conference call) should include, but not be limited to, all of the agencies listed above. The NIRPC should schedule conference calls for a time that is acceptable to all other ICG representatives. The purpose of the Initial ICG Meeting is to establish consensus regarding the TP and/or TIP update/amendment schedule, latest planning assumptions, and analysis methodology. If a previous conformity demonstration was made, the ICG may reaffirm the existing practices. The NIRPC should provide the ICG with the necessary items as soon as possible prior to the conference call. The 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 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 TP and 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 450.218(b). The INDOT and NIRPC 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 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.

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

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 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. The 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 involvement in the development of the TP and/or TIP will be provided in accordance with NIRPC 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 NIRPC and will be made through the NIRPC Transportation Policy Board/Committee and its standing committee structure. NIRPC staff will respond to all significant comments. The NIRPC 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
NIRPC	<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 review and comment period • Transportation Policy Board 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"> • 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
IDEM	<ul style="list-style-type: none"> • Develops motor vehicle emissions budgets (MVEBs) • Creates and develops state implementation plans (SIPs) • Develop SIP emissions factors using the most current US EPA approved emissions model (or delegates responsibility as agreed with other appropriate ICG parties) • Provides draft copy of MVEB and SIPs to ICG for review and comment • 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 • May develop emissions factors using the appropriate emissions model.

Agency	Roles
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, 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 and TP Amendments NIRPC will consult with the ICG as identified in the consultation procedures.

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 NIRPC 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; additional details are included in the conformity consultation procedures.

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 (TCMs, if appropriate). 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 shall be addressed. 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 the TP or TIP, 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. The 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). IDEM shall consider the MPO recommendation and make final determination on any TCM substitutions within SIP. The substitution shall take place in accordance with IIA (Public Law 117-58) TCM Substitution Procedures and provide for full public involvement.

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. 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. MPO 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). The 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. The 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. The 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 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): The NIRPC will identify all projects in the TP/TIP that meet the definition of an exempt project, as defined in the Conformity regulations. The 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 nonexempt, 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. The 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. The 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 the MPO'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 outlined in the existing SIP, and in alignment with the conformity regulations.

IX. Public Consultation Procedures (93.105 (e))

The 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). The ICG agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

ATTACHMENT B:

**Indiana Air Quality Conformity
Interagency Consultation Group
Guidance**

September 2022

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I. Purpose

These procedures are intended to provide guidance for the Metropolitan Planning Organizations (MPOs) and other Interagency Consultation Group (ICG) parties to the Transportation Conformity process as required by Section 176(c) of the Clean Air Act (CAA). Also described is the simplified interagency consultation process required in conformity areas where 1997 Ozone is the only contaminant to address as no emissions analysis is required.

This document is the product of the Interagency Consultation Group (ICG) which includes, but is not limited to, the Federal Highway Administration (FHWA), United States Environmental Protection Agency (EPA), Federal Transit Administration (FTA), Indiana Department of Environmental Management (IDEM), Indiana Department of Transportation (INDOT) and the Indiana MPOs.

II. Background

Transportation Conformity is the general term used to describe the stipulations of the Clean Air Act (CAA) which require transportation planning documents produced by MPOs to conform to the air quality goals established by a State Implementation Plan (SIP). "Conformity" to the purpose of the SIP ensures that Metropolitan Transportation Plans (MTPs) and Transportation Improvement Programs (TIPs) will not cause new air quality violations, worsen existing violations, or delay timely attainment of the National Ambient Air Quality Standards (NAAQS), aka "Standards".

The Clean Air Act, which was last amended in 1990, requires EPA to set NAAQSs/Standards (40 CFR part 50) for six principal pollutants ("criteria" air pollutants) which can be harmful to public health and the environment. Periodically, the standards are reviewed and sometimes may be revised, establishing new standards. The six pollutants are:

- Carbon Monoxide (CO)
- Nitrogen Dioxide (NO₂)
- Ozone (O₃)
- Particle Pollution (PM)
- Sulfur Dioxide (SO₂ – does not apply to transportation conformity)
- Lead (Pb – does not apply to transportation conformity)

IDEM and EPA monitors the air quality and identifies areas that violate a standard. Each area is then classified by EPA based upon its status in meeting those standards, which includes:

- Nonattainment Areas – One or more pollutants exceed (does not attain) a standard

- Once the EPA designates that area as “Nonattainment”, IDEM then establishes a SIP for that area and for each contaminant. The SIP may include Transportation Control Measures (TCMs) that must be implemented. The SIP also establishes a budget, which is a “ceiling” on emissions for a given pollutant for all on-road mobile sources.
- Maintenance Areas – Nonattainment area now meets standards
 - Once the standard is met, two 10-year Maintenance Plans must be established, and the area is classified as “Maintenance”.
- Attainment Areas – Both 10-Year Maintenance Plans end
 - Once both Maintenance Plans end, then conformity no longer applies for that pollutant in that area.

These procedures use the term “Conformity Area”, which can be interpreted as “Nonattainment or Maintenance Area”.

EPA’s official status of all conformity areas is shown in their “Green Book” at https://www3.epa.gov/airquality/greenbook/anayo_in.html.

Most conformity area boundaries coincide precisely with a Metropolitan Planning Area (MPA), while others are larger than the MPA. That portion of a conformity area that is located outside of the MPA is called the “Donut Area”. While most conformity areas are within or a part of an MPA, some are in rural areas not adjacent to any MPO MPAs and are called “Isolated Rural Areas”. INDOT manages the conformity process in the Indiana Isolated Rural Areas. Information specifically related to conformity areas in Indiana can be found in Appendix 3.

III. Key Elements of Air Quality Conformity Determination

This section describes the key requirements of transportation conformity and how they interact. The specific regulatory requirements can be found at [40 CFR 93](#), entitled “Determining Conformity of Federal Actions to State or Federal Implementation Plans”. The major components of a conformity determination include:

- A. Interagency Consultation
- B. Public Involvement
- C. Latest Planning Assumptions and Emissions Model
- D. Regional Emissions Analysis
 - Motor Vehicle Emissions Budget (MVEB)
- E. Timely Implementation of Transportation Control Measures (TCM)
- F. Fiscal Constraint

Many conformity areas in Indiana need only address conformity for 1997 Ozone. Those areas do not require a Regional Emissions Analysis. The EPA issued guidance to assist in implementation of a February 16, 2018, decision from the United States Court of Appeals for the District of Columbia Circuit in *South Coast Air Quality Mgmt. District v. EPA* (“South

Coast”)¹. The court decision referred to the 1997 ozone NAAQS nonattainment or maintenance areas that were designated attainment for the 2008 ozone NAAQS as “orphan areas”. The court decision stated that transportation conformity applies for these orphan areas, however, since the Standard has been revoked no Regional Emissions Analysis is required. The other elements outlined above still apply.

A. Interagency Consultation

Ongoing coordination and communication between Federal, State, and local transportation and air quality agencies is vital to a smoothly running conformity process. In addition, a clear understanding of roles and responsibilities of participating agencies is essential.

The conformity rule requires that Federal, State, and local transportation and air quality agencies establish formal procedures to ensure interagency coordination on critical issues. Typical participants in interagency consultation include FHWA, FTA, EPA, State DOTs, MPOs and other local transportation agencies, and State and regional air quality agencies. In addition, public transportation operators are often active participants in interagency consultation. As noted in Section VI of this document (as well as in 40 CFR 93.105 (c)), INDOT, IDEM, Local Air Quality Agencies or Authorities, FHWA, FTA, and EPA are required consultation participants of the consultation group and should be copied on informal and formal requests for consultation. Transit providers and other MPOs may also be included on informal and formal requests for consultation depending on the specific context. ICG Interagency consultation is a forum for discussing key assumptions to be used in conformity analyses, strategies to reduce mobile source emissions, specific impacts of major projects, issues associated with travel demand and emissions modeling, and the development of MVEBs. The specific process to follow in each area must be adopted as part of the SIP by the State air quality agency and must be used to develop metropolitan transportation plans, TIPs, and the SIP. These adopted interagency consultation procedures are included in the “conformity SIP”.

B. Public Involvement

Good public involvement processes are proactive, easily accessible to the public, and keep the public informed on an ongoing basis. MPOs are required to make metropolitan transportation plans, TIPs, and conformity determination letters available for public review. In addition, according to [23 CFR 450.326\(b\)](#) in nonattainment area TMAs (MPO areas over 200,000 in population), the MPO shall provide at least one formal public meeting during the TIP development process. MPOs must also respond to public comment and provide adequate notice of relevant meetings. Project sponsors must also provide an opportunity for public involvement during the project development process where otherwise required by law.

¹ <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P100VQME.pdf>

C. Latest Planning Assumptions and Emissions Model

Conformity determinations must be based on the latest planning assumptions and the latest EPA-approved emissions estimation model at the time the conformity analysis begins. This requirement ensures that the latest planning, travel, vehicle age and fleet mix, demographic, and economic assumptions are reflected in conformity determinations. The latest planning assumptions available at the time the conformity analysis begins including population, employment, travel needs, vehicle fleet composition (proportions of types of vehicles), land use, and economic development. The conformity rule requires that when metropolitan transportation plans and TIPs are developed or updated², the assumptions used to forecast future conditions must be based on the latest available information. Current motor vehicle fleet information is essential to good planning and forecasting and is one of the key planning assumptions in conformity. Likewise, the latest EPA-approved emissions estimation model must be used that reflects the latest science and policies regarding motor vehicle emissions and the emissions benefits of cleaner engine and fuel standards.

Estimating regional emissions from on-road mobile sources traveling on the planned transportation system is essential to a conformity determination. However, regional emissions analysis does not apply in conformity areas that need only address conformity for the 1997 Ozone standard.

D. Regional Emissions Analysis

Regional emissions analysis is the key analytical component of a conformity determination. The analysis supports the demonstration that transportation investments are consistent with air quality goals.

Estimating regional emissions from on-road mobile sources traveling on the planned transportation system is essential to a conformity determination. The conformity rule requires that future emissions estimates include the entire horizon of the metropolitan transportation plan (at least 20 years) for the region. Note that MPOs have the option to shorten the time horizon for the conformity demonstration if certain requirements are met. The regional emissions that are forecast through models are compared to the MVEB (“budget”) from the SIP that sets a limit on emissions from on-road sources. The USDOT is only allowed to make a determination that an area is in conformity if modeled emissions do not exceed the allowed budget. In the absence of an approved or adequate budget, areas must pass interim tests that basically compare emissions associated with the proposed transportation network (“build” scenario) with emissions from either a “no-build” scenario or baseline year, or both. The regional emissions analysis is based on motor vehicle travel across the entire current

² “Update” is defined in transportation planning regulations [23 CFR 450.104](#). An update is different than a plan amendment, which is also defined in [23 CFR 450.104](#).

and planned transportation system and reflects the investments detailed in the metropolitan transportation plan and TIP.

This does not apply in conformity areas that need only address conformity for the 1997 Ozone standard.

E. Motor Vehicle Emissions Budget

The SIP accounts for emissions of each pollutant for each source type. There are four types of sources: on-road mobile, non-road mobile, stationary (e.g., refineries), and area (e.g., dry cleaners). The State air quality agency is responsible for the development of the entire SIP. The air quality agency identifies how pollution from all sources will be reduced sufficiently to achieve the purpose of the SIP. Required emissions reductions are calculated, and control measures are adopted to achieve needed reductions.

An MVEB is that portion of the total allowable emissions in the SIP that is allocated to on-road mobile sources, such as cars, trucks, and buses. It is the level of on-road emissions that the area can have and still meet the SIP's goals. Budgets are established in the applicable SIP as part of the air quality planning process by State air quality or environmental agencies and approved by EPA. Transportation agencies participate in this process in accordance with required interagency consultation procedures.

For transportation conformity, projected emissions from highway and public transportation use must be less than or equal to the budgets. In other words, the budget acts as a ceiling on emissions from the on-road mobile sector.

This does not apply in conformity areas that need only address conformity for the 1997 Ozone standard.

F. Timely Implementation of Transportation Control Measures (TCMs)

When an EPA-approved SIP includes TCMs, each time a conformity determination is made, the MPO must demonstrate that these measures are being implemented on schedule as called for in the SIP.

TCMs are measures included in an approved SIP to help reduce emissions from on-road mobile sources. The conformity regulations contains a definition of TCMs for conformity purposes and can be found at [40 CFR 93.101](#). Some of these measures are specifically listed in the CAA, and transportation and air quality agencies often consider whether such measures are beneficial and needed to meet air quality requirements. TCMs are designed to reduce emissions from motor vehicles by reducing vehicle use, changing traffic flow, or changing congestion conditions. Examples include high-occupancy vehicle (HOV) lanes, improving public transportation, and vanpooling programs. If an EPA-approved SIP includes any of these measures, the MPO must show, as part of the conformity determination, that the

measures are being implemented on schedule and given priority for Federal funding. Not all areas have these measures in their approved SIPs; nevertheless, these types of measures are often routinely implemented through the metropolitan transportation plan and TIP (e.g., public transportation services, telecommuting programs). If not included in an approved SIP, such measures are not TCMs for the purpose of conformity, and the MPO does not have to demonstrate their timely implementation.

If an MPO finds that a TCM has become delayed, the MPO may decide to replace the delayed TCM with a new TCM through a process called TCM substitution³ in order to meet its timely implementation requirement. Through this process, an MPO does not need to go through a full SIP revision in order to substitute a new TCM for a delayed TCM.

G. Fiscal Constraint

Metropolitan transportation plans and TIPs in nonattainment or maintenance areas must be shown to meet the FHWA/FTA fiscal constraint requirements.

The FHWA/FTA transportation planning regulations⁴ require that metropolitan transportation plans and TIPs be based upon reasonable estimates about future revenues. In addition, in the first two years of the TIP, projects must be limited to those for which funds are known to be available or committed. This is known as fiscal constraint. The conformity rule requires that the fiscal constraint requirements of the planning regulations be met prior to determining conformity on a MTP or TIP.

IV. What Actions Require Conformity?

Some MTP and TIP actions do not require any consultation with the ICG. Other actions require at least consultation with the ICG, yet other actions require an additional action by the USDOT to issue a Conformity Determination Letter. This section describes these various scenarios and the general steps for each. The steps are described in more detail in the next section.

³ [Guidance for Implementing the Clean Air Act Section 176\(c\)\(8\) Transportation Control Measure Substitution and Addition Pro - EPA-420-B-09-002, January 2009](#)

⁴ [23 CFR 450](#)

A. No ICG Consultation required⁵

No ICG conformity consultation is required when an MPO administratively modifies a MTP or TIP (in accordance with documented modification procedures). Most MPOs have established modification criteria in their MTP, TIP or participation plans, but in general, an MPO can administratively modify (as opposed to amend) a MTP or TIP if:

1. Moving Project from one band of years to another in the MTP or moving a project from one year to another year in a TIP. This applies to moving both exempt and non-exempt types of projects. These changes can be made via Administrative Modification. Projects in the 5th year of a TIP are illustrative only and are not recognized by FHWA and FTA as part of the TIP. Therefore, moving a project to or from Year 5 of a TIP would require an amendment and, at a minimum, ICG consultation.

2. Minor Cost Changes to a Project in a MTP or TIP. Typically, this only occurs with the TIP, and those changes can be made via Administrative Modification. Each MPO has their own definition of the threshold for “minor cost changes”, which should be clearly identified in documented TIP modification and amendment procedures.

3. Adding “Grouped” Project in a TIP – Grouped projects are not considered to be of an appropriate scale to identify individually in a TIP or STIP and may be grouped by function, geographic area or work type. A grouped project in a nonattainment or maintenance area is one that must be consistent with the “exempt project” classifications in [40 CFR 93](#). Due to the nature of these projects, no “exempt” determination is required for them, and they can be added into the TIPs by administrative modification as long as the respective MPO has defined grouped project types in their TIP development and modification/amendment procedures. **If an MPO does not have defined grouped project types in their TIP development and modification/amendment procedures, then these projects must be added via amendment and consultation is required.** INDOT has identified work types that can be grouped together, and the list of these work types are maintained outside of these procedures. The most recent list is included in Appendix 7. Consultation with the ICG occurs prior to any changes being made to this list.

B. Only ICG Consultation required

1. Amending TIP with exempt project – If an MPO amends their TIP with only exempt projects, then the conformity process may end with the ICG reviewing the initial consultation submittal. This consultation consists of the MPO providing the ICG with

⁵ This section **only applies** to MPOs with documented administrative modification and amendment processes. If the types of changes described below are made as defined as amendments within the respective MPO processes then ICG consultation is required.

information about the amended exempt projects and seeking concurrence that the projects are exempt. Projects in the 5th year of a TIP are illustrative only and not recognized by FHWA and FTA as part of the TIP. Therefore, moving an exempt project to/from Year 5 of a TIP would be an amendment that requires ICG consultation.

2. Amending STIP with an exempt project in a Donut Area – Before INDOT amends the STIP with an exempt project in a Donut Area, INDOT must coordinate with the respective MPO so the MPO can consult with the ICG and seek concurrence that the project is exempt.

Note: The Conformity process ends for an amendment containing only exempt projects as soon as the MPO policy board approves the amendment, if the ICG has concurred during the informal consultation process, thereby allowing those projects to be incorporated immediately into the STIP. Whereas, an amendment containing both exempt and non-exempt projects must follow the additional steps outlined in Section C below, USDOT Conformity Determination Letter Required.

C. USDOT Conformity Determination Letter Required

1. Amending MTP or TIP with a non-exempt project – If an MPO amends their MTP or TIP with a non-exempt project, then the USDOT must find that the planning documents for that MPO (MTP and TIP) both comply with conformity requirements before those amendments become effective and projects from any TIP update or amendment can be incorporated into the STIP. Projects in the 5th year of a TIP are illustrative only and not recognized by FHWA and FTA as part of the TIP. Therefore, moving a non-exempt project to/from Year 5 of a TIP would require an amendment and a conformity determination letter.

2. Amending STIP with non-exempt projects in a Donut Area – Before INDOT amends the STIP with a non-exempt project in a Donut Area, INDOT must first coordinate with the MPO to consult with the ICG to get a conformity determination.

3. Updating MTP or TIP – All updated MTPs and TIPs in conformity areas must receive a conformity determination letter before they can be officially recognized by FHWA and FTA, and before the projects in the new TIP can be incorporated into the STIP.

Conformity determination letters state that all the planning documents for a particular MPO in a conformity area (MTP and TIP) comply with conformity requirements, as well as projects in any Donut Areas. Therefore, even if a new conformity determination letter is requested due to a change to only one of the documents, the new conformity determination letter concludes that both documents comply with conformity requirements.

The TIP must be consistent with the MTP. If a non-exempt project is amended into the TIP but is not in the MTP, then a conformity determination letter cannot be issued until the MTP is amended to include the same project.⁶

If an MPA is in more than one conformity area, then the conformity analysis needs to evaluate emissions/consult with the ICG in each conformity area in order to determine conformity.

V. Conformity Consultation Steps

A total of 9 steps encompasses the Conformity Consultation Process:

1. Informal Consultation
2. Response to Initial Submittal
3. Complete Public Involvement
4. Policy Board Approval
5. Update Conformity Report
6. Request FHWA to Initiate Formal Consultation
7. FHWA Initiates Formal Consultation
8. ICG Response to Formal Consultation
9. USDOT Issues Conformity Determination Letter

However, the full process is not always required, as described below, depending on the type of action that is being pursued. Some actions require only “Informal Consultation” (Step 1), while others require both “Informal” and “Formal” Consultation, which requires the completion of all nine (9) steps.

- “Informal Consultation” is the initial step taken to initiate consultation with the ICG.
- “Formal Consultation” is a subsequent step initiated by the FHWA when a new conformity determination (and/or conformity determination letter) is required.

⁶ There is one exception to this requirement related to the addition of PE (prior to 30% design) ONLY for a project in the TIP.

Figure 1 below, entitled “Consultation Flowchart”, shows the general process for air quality consultation in Indiana. Subsequent sections describe the tasks, timelines, responsible parties and expectations regarding consulting with the ICG. The figure is enlarged in Appendix 4.

Figure 1: Consultation Flowchart



A. Informal Consultation

The MPO (INDOT for isolated rural areas) initiates conformity consultation with the ICG by sending an email with specific information. This is commonly called “Informal consultation”. MPOs and INDOT should use the template in Appendix 5 for writing the email.

The MPO (or INDOT) provides the ICG seven (7) calendar days to comment. This correspondence is generally distributed when the MPO initiates public involvement on the MTP or TIP update or amendment, and **prior** to the MPO Policy Board approval. Once these are complete, then the MPO requests FHWA to initiate “Formal Consultation”, if necessary, and make a conformity determination/issue a conformity determination letter.

The information to be provided in the email is:

1. Reason for consultation – Describe the reason for ICG consultation, i.e., whether it stems from a MTP or TIP update or a MTP or TIP amendment. If the reason for consultation is a TIP amendment (or STIP amendment in isolated rural areas), then indicate in the email if any are non-exempt projects.

2. Public Involvement – Describe when public involvement will occur on the update or amendment, which may have already begun. ICG review of the Informal consultation material can occur concurrently with public involvement.
3. Policy Board Approval – Identify the date the MPO Policy Board is anticipated to approve the update or amendment.
4. Planning Documents – Attach the draft of the MTP update or amendment, or TIP update or amendment. Project descriptions must adequately describe the planned scope, include termini, and identify each project as exempt or non-exempt.

If the reason for ICG consultation includes a MTP update, MTP amendment, TIP update, or a TIP amendment involving non-exempt projects, then the following must also be included:

5. Conformity Report – Attach the draft Conformity Report that describes the conformity requirements and compliance with them. Appendix 6 – Template MTP TIP 1997 Ozone Conformity Report shows a template that should be utilized in 1997 Ozone-only conformity areas. If a conformity area is classified as nonattainment or maintenance for any other pollutant, then then a conformity analysis is required, and the following must also be provided in the report:
 - a. MTP horizon year
 - b. Conformity test methodology and analysis years
 - c. MVEB (in applicable SIPs)
 - d. TCMs
 - e. TDM and approved travel demand and emissions modeling parameters as provided in FHWA available guidance, and any other applicable Latest Planning Assumptions.⁷
6. Non-Exempt Projects – Attach a cumulative list of all planned non-exempt projects in the conformity area. Hyperlinks are acceptable.

⁷ FHWA TDM website and guidance: <https://www.fhwa.dot.gov/pgc/index.cfm?ddisc=95&dsub=1525>; Planning assumption requirements are different for an MTP Update than they are for an MTP amendment. See [23 CFR 450.104](#) for definitions of “update” and “amendment.” Conformity Determination Letters issued for “amended” MTPs (i.e., MTPs that have not been “updated” in accordance with the requirements outlined in 23 CFR 450.324) do not restart the conformity clock for those documents.

- a. MTP projects that are also in the TIP should be identified.
- b. New or removed projects in a MTP or TIP amendment should be identified by highlighting (**example**) or strikethrough (~~example~~).
- c. The list must include any regionally significant (non-exempt) projects regardless of funding source.
- d. The list must separately list any projects in any Donut Area.
- e. If there are multiple MPAs in a conformity area, then the list must include a separate list from each MPO's MPA.

For MTP and TIP updates, the narrative portions should be reviewed by INDOT and FHWA per Planning Cooperative Procedures Manual (PPM) prior to public involvement. FHWA and FTA does not issue a conformity determination letter until identified comments on the complete MTP or TIP update have been addressed.

B. Response to Initial Submittal

Agencies have seven (7) calendar days to send their reply. They are to send their reply to everyone to whom the original email was sent. Feedback sought includes:

1. Whether the listed projects are correctly identified as Exempt or Non-exempt.
2. Any questions or comments about the Conformity Report.
3. Any questions or comments about the travel demand or emissions model inputs and assumptions (when emissions analysis is required).
4. Indicate if an ICG meeting or call is desired.
5. If the consultation involved a MTP or TIP update, or a TIP amendment involving non-exempt projects that has been submitted for an expedited request, EPA and IDEM may indicate if the agency concurs in advance of "Formal Consultation" that FHWA may approve the conformity determination/issue the conformity determination letter once FHWA receives the request, assuming no conformity-related comments are received during public involvement and the project scope was not changed. This "Advance Concurrence" allows the ICG agencies to not have to subsequently respond again regarding the same update or amendment when FHWA initiates formal consultation. The ICG agency may simply state via email or other written response:

“The [ICG agency] concurs in advance that FHWA may approve the conformity determination, assuming no conformity-related comments are received during public involvement and the project scopes do not change.”

If no response is provided by the end of the 7-day comment period, then the sender can assume the ICG agency has no comments at this time but may have comments during Formal Consultation.

If one ICG agency requests a meeting, then the MPO (or INDOT in isolated rural areas) sets up a meeting (can be virtual) with all the ICG members to discuss and resolve outstanding questions or concerns. After this meeting, subsequent submittal(s) with 7-day review period(s) may be requested by an ICG agency or MPO.

For TIP amendments involving only exempt projects, the conformity consultation officially ends at the end of the 7-day ICG review. Afterwards, the MPO may complete public involvement and the amendment can be approved by the MPO Policy Board.

C. Complete Public Involvement

Each MPO completes public involvement on the MTP or TIP update or amendment, as well as the Conformity Report (when applicable) in accordance with their published public involvement procedures.

D. Policy Board Approval

For TIP amendments involving only exempt projects, the MPO Policy Board resolution or meeting minutes should state (or proximity to):

“The MPO consulted with the Interagency Consultation Group and concluded on [date of end of 7-day ICG Review] the proposed TIP amendment includes only exempt projects; no new conformity determination is required, and the amendment meets transportation conformity requirements under Section 176(C) of the Clean Air Act and 40 CFR Parts 51.390 and 93.”

For MTP updates, MTP amendments and TIP amendments involving non-exempt projects, the MPO Policy resolution or meeting minutes should state (or proximity to):

“The MPO consulted with the Interagency Consultation Group and the MPO anticipates, subsequent to Policy Board approval, the USDOT will find that the proposed [MTP or TIP] [update or amendment] meets transportation conformity requirements under Section 176(C) of the Clean Air Act and 40 CFR Parts 51.390 and 93.”

E. Update Conformity Report

The MPO (or INDOT in isolated rural areas) updates the conformity report to include ICG consultation summary, public involvement comments received, resolution of public comments, and the Policy Board approval document (MPOs only).

F. Request FHWA to initiate Formal Conformity Consultation

The MPO (or INDOT in rural areas not adjacent to MPAs) requests FHWA to initiate formal conformity consultation with the ICG by sending an email with specific information to FHWA (not the whole ICG). The MPO or INDOT should generally use the template in Appendix 8 – Template Email Requesting Formal Consultation when writing the email.

The information to be provided in the email is:

1. Reason for formal consultation – The reason for ICG formal consultation, i.e., whether it stems from a MTP update, TIP update, a MTP amendment or a TIP amendment (or STIP amendment in isolated rural areas) involving non-exempt projects.
2. Public Involvement – The time period that public involvement occurred. Indicate if conformity-related comments were received and how addressed.
3. Policy Board Approval – The date the Policy Board approved the MTP or TIP update or amendment.
4. Planning Documents – Attach the final MTP or TIP update or amendment.
5. Non-Exempt Projects – Attach the most current cumulative list of all non-exempt projects in the conformity area. The project list should be the same list that was provided by the MPO (or INDOT) during informal consultation with any revisions necessary as a result of the ICG consultation process. Hyperlinks are acceptable.
6. Conformity Report – Attach the updated Conformity Report that describes the conformity requirements and compliance with them. The report should be the same that was provided during informal consultation, except for the addition of an ICG consultation summary, public comments/responses and Policy Board approval document (MPO only).

G. FHWA Initiates Formal Consultation

If the request is expedited and all the ICG agencies gave written/email advance concurrence, then FHWA may proceed directly to issuing the conformity determination letter if no conformity-related comments were received during public involvement and

the project scopes did not change. Otherwise, FHWA sends an email to the ICG members that initiates a “Formal” conformity consultation process. FHWA will generally follow the template in Appendix 9 – Template Email Initiating Formal Consultation.

The review period is 30 calendar days when a conformity emissions analysis is required, and 15 calendar days in 1997 ozone-only conformity areas where no conformity emissions analysis is required. The MPO representative requesting formal consultation and the INDOT planning liaison receives a copy of the email.

In the email, FHWA requests the other ICG agencies concur that a conformity determination should be made, and summarizes:

1. The reason for formal consultation
2. When public involvement occurred
3. Whether any conformity-related public comments were received
4. When the policy board approved the MTP or TIP update or amendment
5. State the end of the formal consultation review period
6. If this is an expedited request, indicate which ICG agencies gave advance concurrence during Informal Consultation

FHWA also attaches to the email:

1. MTP or TIP Update/Amendment
2. Updated Conformity Report
3. List of non-exempt projects

H. ICG Response to Formal Consultation

The ICG agencies have 30 calendar days to reply (15 calendar days in 1997 ozone-only conformity areas). The desired feedback is concurrence that conformity requirements have been met and whether the USDOT should issue the conformity determination letter.

If an ICG agency provided advance concurrence during Informal Consultation, then that agency need not respond to the Formal Consultation request. If all the ICG agencies reply affirmatively prior to the end of formal consultation, then FHWA can issue the conformity determination letter sooner. The USDOT will not issue the conformity determination letter until all the ICG agencies respond, either with advance concurrence during Initial Consultation or during Formal Consultation.

I. USDOT issues Conformity Determination Letter

Once formal consultation is requested, the USDOT can issue a conformity determination letter when all ICG agencies respond affirmatively, either with advance

concurrence during Initial Consultation or during Formal Consultation (no response by specified date may be interpreted as an affirmative response).

FTA allows FHWA to unilaterally sign all conformity determinations in Indiana. Conformity Determination Letters follow the template in Appendix 10 – Conformity Determination Letter Template. FHWA issues the conformity determination letter within 7 calendar days after the end of formal conformity consultation, assuming all ICG agencies have responded.

Conformity determination letters generally are for the whole conformity area and state that both planning documents (MTP and TIP) for the MPO comply with conformity requirements. Conformity determinations cover any non-exempt projects in any Donut Area. When a conformity area includes multiple MPAs, then conformity determinations are by MPO. When TIPs are in the process of being updated, then a conformity determination letter may reference both the old TIP and the updated TIP.

In the case of the Louisville MPO and Cincinnati MPO, the Indiana Division issues an email of support to the Kentucky FHWA Division Office or Ohio FHWA Division Office, respectively, in accordance with the current KYINOH agreement. The corresponding lead FHWA division office works with the applicable FTA Regional office to issue the USDOT conformity determination. Where differences exist between these procedures and those in Ohio or Kentucky, Indiana defers to the judgment of the lead FHWA Division Office.

FHWA distributes the conformity determination letter to the ICG, and others identified in the template. The distribution email will include the following attachments (hyperlinks allowed):

1. USDOT Conformity Determination Letter
2. MTP or TIP Update/Amendment
3. Updated Conformity Report
4. List of non-exempt projects

Once a conformity determination letter is issued, the conformity requirements are complete, and the associated MPO Planning documents are effective as of the date of the conformity determination. The STIP can then be updated or amended with the associated projects.

VI. Agency Roles and Responsibilities

A. Metropolitan Planning Organization (MPO)

- Submits Informal ICG Consultation submittals

- Schedules and hosts any ICG Meetings and prepares associated meeting minutes
- Runs travel demand model (TDM)
- Updates/Amends the MTP and TIP
- Prepares Conformity Demonstrations for MPO MTP and TIP (if required).
- Prepares the Conformity Report for MPO Nonattainment and Maintenance areas
- Manages public review and comment period
- Policy Committee makes the conformity determination and adopts the MTP/TIP
- Asks FHWA to initiate formal consultation
- Maintains and manages conformity process schedule
- In conformity areas with multiple MPAs, the applicable MPOs coordinate conformity emissions analyses (if required) and shares list of non-exempt projects in their MTP and TIP with the other MPO.

B. Indiana Department of Transportation (INDOT)

- Runs Statewide travel demand model for isolated rural areas of the State. For Donut Areas, will coordinate with the applicable MPO to determine model to use (MPO or Statewide model).
- Submits all non-exempt and exempt projects (all sponsors) to MPOs for inclusion in modeling and conformity demonstration in accordance with the established conformity schedule. This includes projects in the Donut Area.
- Provides traffic count information, HPMS VMT, and other data, as needed, to the MPO.
- Reviews and responds to Informal Consultation and Formal Consultation (if advance concurrence not provided during Informal Consultation) as a member of the ICG in all Indiana conformity areas within the allotted time
- Sends Informal ICG Conformity submittal to ICG for isolated rural areas
- Requests FHWA to initiate formal conformity consultation in isolated rural areas

C. Indiana Department of Environmental Management (IDEM)

- 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 and responds to Informal Consultation and Formal Consultation (if advance concurrence not provided during Informal Consultation) as a member of the ICG in all Indiana conformity areas within the allotted time

D. Local Air Quality Agency

- Provides technical guidance and advice
- May develop emissions factors using the appropriate emissions model.
- Reviews and responds to Informal Consultation and Formal Consultation (if advance concurrence not provided during Informal Consultation) as a member of the ICG in all Indiana conformity areas within the allotted time

E. Federal Highway Administration (FHWA)

- Coordinates federal review process for conformity determinations
- 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 and responds to initial conformity consultation within the allotted time
- Initiates formal consultation after receiving the request from an MPO or INDOT
- Issues USDOT conformity determination letter in accordance with these procedures

F. Federal Transit Administration (FTA)

- Reviews and responds to Informal Consultation and Formal Consultation (if advance concurrence not provided during Informal Consultation) as a member of the ICG in all Indiana conformity areas within the allotted time

G. United States Environmental Protection Agency (EPA)

- Promulgates conformity regulations
- Approves the SIP and motor vehicle emissions budgets (MVEBs)
- Provides technical advice and guidance on conformity
- Reviews and responds to Informal Consultation and Formal Consultation (if advance concurrence not provided during Informal Consultation) as a member of the ICG in all Indiana conformity areas within the allotted time

H. Conflict Resolution

Pursuant to [40 CFR 93.105\(d\)](#), conflicts among State agencies or between State agencies and an MPO regarding conformity determinations that cannot be resolved should be submitted to the Governor of the appropriate state for resolution.

Appendix 1 – Legislation, Regulations, and Guidance

[23 USC 134](#) – Metropolitan Transportation Planning

[23 USC 135](#) – Statewide and nonmetropolitan transportation planning

[23 CFR 450](#) – Planning Assistance and Standards

[40 CFR 51](#) – Requirements for Preparation, Adoption and Submission of Implementation Plans

[40 CFR 93](#) – Determining Conformity of Federal Actions to State or Federal Implementation Plans

[42 USC 7506](#) – Limitations on Certain Federal Assistance

[49 USC 53](#) – Public Transportation

[EPA Green Book](#)

[FHWA Conformity Website](#)

[FHWA Travel Demand](#)

[EPA -State Implementation Plan](#)

[Indiana State Implementation Plan](#)

[EPA South Coast II Guidance](#)

[Latest Planning Assumptions Guidance EPA-2008](#)

Appendix 2 – Abbreviations

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

MTP – Metropolitan Transportation Plan

MVEB – Motor Vehicle Emissions Budget

NAAQS – National Ambient Air Quality Standard (aka. Standard)

NEPA – National Environmental Policy Act

SIP – State Implementation Plan

TCMs – Transportation Control Measures

TDM – Travel Demand Model

TIP – Transportation Improvement Program

TSM – Transportation System Management

USDOT – United States Department of Transportation

VMT – Vehicle Miles Traveled

Appendix 3- Current Indiana Nonattainment and Maintenance Areas (as of 5/12/2022; will be updated separately as needed)

Table 1 shows all the MPOs in Indiana and whether their MPA currently falls within at least one county that is designated as “Nonattainment” or “Maintenance”, and which of these need only to address the 1997 Ozone Standard. Rural Nonattainment and Maintenance conformity areas are not shown in Table 1. MPOs that do not include a conformity area do not have any actions to take to meet transportation conformity.

Table 1 – MPAs

	<u>Include Conformity Area?</u>
Area Plan Commission of Tippecanoe County (APCTC) (Lafayette)	No
Bloomington/Monroe County Metropolitan Planning Organization (BMCMPPO)	No
Columbus Area Metropolitan Planning Organization (CAMPO)	Yes ¹
Delaware-Muncie Metropolitan Plan Commission (DMMPC)	Yes ¹
Evansville Metropolitan Planning Organization (EMPO)	Yes ¹
Indianapolis Metropolitan Planning Organization (IMPO)	Yes ¹
Kentuckiana Regional Planning & Development Agency (KIPDA) (Louisville)	Yes
Kokomo-Howard County Governmental Coordinating Council (KHCGCC)	No
Madison County Council of Governments (MCCOG) (Muncie)	Yes ¹
Michiana Area Council of Governments (MACOG) (South Bend)	Yes ¹
Northeastern Indiana Regional Coordinating Council (NIRCC) (Fort Wayne)	Yes ¹
Northwestern Indiana Regional Planning Commission (NIRPC) (Gary)	Yes
Ohio-Kentucky-Indiana Regional Council of Governments (OKI) (Cincinnati)	Yes
Terre Haute Area Metropolitan Planning Organization (THAMPO)	Yes ¹

1 – Currently only needs to address conformity to the 1997 Ozone Standard

Currently, the Indianapolis MPO (IMPO) and the Ft. Wayne MPO (NIRCC) are the only MPOs that have a Donut Area. Currently, Jackson and Greene Counties are the only rural areas that require conformity. The Anderson MPO is currently the only MPO that has an MPA in two conformity areas. Several conformity areas are unique that they cover portions in two or more states or in two or more Metropolitan Planning Areas (MPO areas). Therefore, they must address slightly different requirements for transportation conformity.

- **Bi-State** (Evansville, Louisville, Cincinnati, NW Indiana*)
 - One (1) SIP Budget for each region.
 - Each MPO coordinates with the ICG from each State, and all the FHWA Divisions in a region coordinate, but only one (1) State/FHWA Division takes the lead for making conformity determinations.

** Although the Northwestern Indiana Regional Planning Commission (NIRPC) coordinates with the Chicago Metropolitan Agency for Planning (CMAP) on many matters, they each have their own SIP Budgets. As such, there is no need for those MPOs to coordinate conformity analyses.*

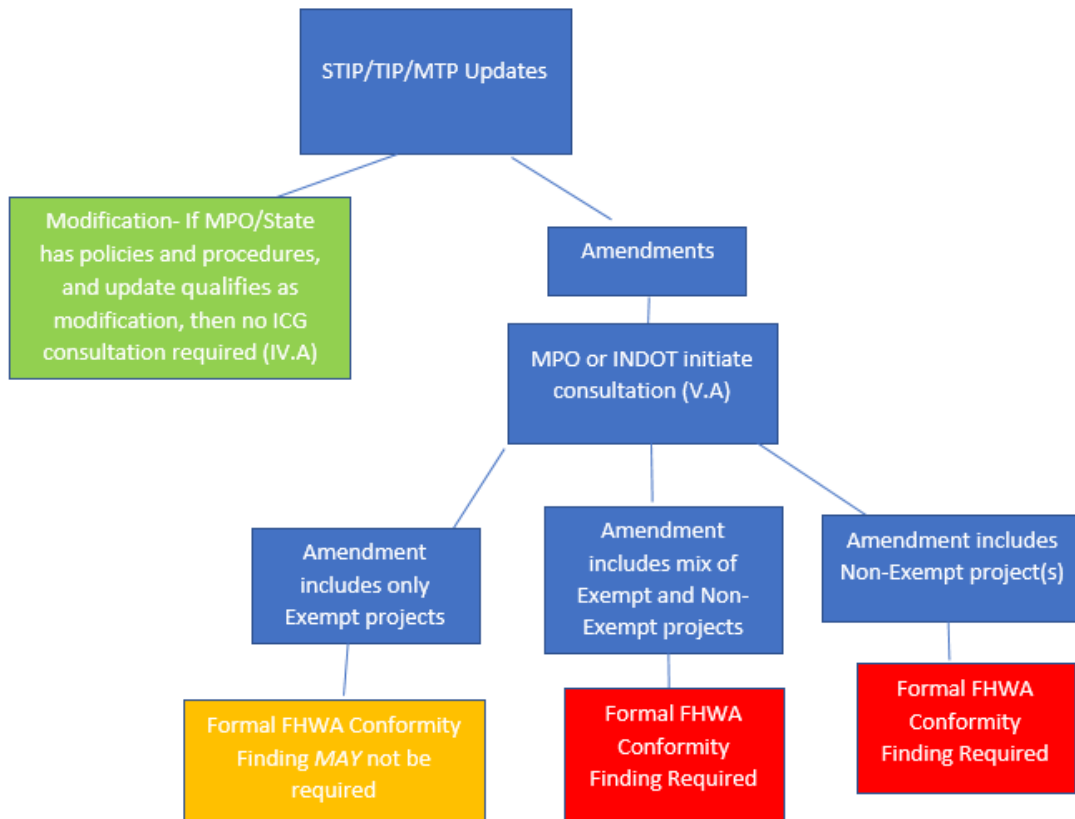
*** Indiana takes the lead for conformity determinations in for the Evansville region, Kentucky takes the lead for the Louisville region, and Ohio for the Cincinnati region.*

- **Bi-MPA** (Indianapolis, Anderson, Muncie, Columbus)
 - Each MPO coordinates with ICG separately.
 - Each MPO includes all non-exempt projects within their conformity area, whether within their MPA or outside their MPA.*

** Since the Anderson MPO covers portions of two (2) conformity areas, ICG coordination must include all non-exempt projects within both conformity areas.*

Appendix 4 – Consultation Flowchart

Conformity Consultation Flow Chart



Appendix 5 – Template Email Initiating Informal Consultation

MPO Initiating Informal Consultation

To: [ICG membership as recommended within guidance]

Subject: ICG Communication – [Date] [Region] Transportation Conformity

Hello ICG members,

The XX MPO has X number of project amendments to the FY xx-xx TIP or XXXX MTP for consideration by the XX MPO Policy Committee at their upcoming meeting on XX/XX/XX. X number of projects have been determined as exempt by the MPO, and X number have been determined nonexempt. (For Bi-state MPOs only: There are x number of exempt projects, and x number of nonexempt projects in KY/IN/OH).

Our proposed schedule for these amendments is:

- [Date] – ICG email communication (informal consultation – this email)
- [Date Above + 7] – deadline for ICG questions or comments on the included project amendments
- [Date Above + 15 or 30 – comment period start/end date] – public/ICG comment period on amendments and conformity report
- [Date Above + at least 1] – official public hearing for conformity process
- [Date that signed board resolution is received] – approved documents will be shared with FHWA to initiate formal consultation

In lieu of a conference call, I'm providing the following list of approval and/or amendment requests for the plans/programs listed below and their exemption status.

Please consider this an informal request for review and comment regarding the need for air quality consultation for the proposed amendments. We are requesting that you reply to this email by [Date 7 days from this email] if you have any questions, comments, or would like to request a conference call to discuss further. Per the [xx/xx/2022 Interagency Consultation Group Conformity Consultation Guidance Document](#), no response can be interpreted as concurrence.

Appendix 6 – Template MTP TIP 1997 Ozone Conformity Report

Transportation Conformity Determination Report for
the 1997 ozone NAAQS

[Insert MPO name]

*[Optional – insert name of
applicable Metropolitan
Transportation Plan and
Transportation
Improvement Program on
which conformity is being
demonstrated]*

[insert date]

Note to template users:

This document is an optional template for "orphan" areas completing a metropolitan long range transportation plan (MTP) and transportation improvement program (TIP) conformity determination for the 1997 ozone standard. It assumes the area is in attainment for all other transportation-related national ambient air quality standards (NAAQS). Users who opt to follow the template should engage interagency consultation to discuss its appropriateness and necessary modifications to apply to the local area. This template is not a requirement, does not substitute for any requirements, and may not be appropriate in all circumstances. It is intended as a resource only.

For areas that are required to demonstrate conformity for other pollutants, or areas that are listed as "partial orphan" areas, this template may not cover all the conformity requirements for those areas. However, the "Executive Summary" section and Section 5 may help document conformity determinations on the Plan and TIP for the 1997 ozone NAAQS.

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Acknowledgements *[optional]*

This *Transportation Conformity Report* for the *[insert year/name]* Metropolitan Transportation Plan (MTP) and *[insert years]* Transportation Improvement Program (TIP) was prepared by *[insert MPO name or preparer]*. Individuals from the following agencies contributed their efforts towards the completion of the Transportation Conformity Determination Report. They include:

- *[insert list of participating agencies (usually interagency consultation partners)]*

Executive Summary

As part of its transportation planning process, [insert MPO/agency name] completed the transportation conformity process for the [insert year/name] MTP and [insert years] TIP. This report documents that the [insert year/name] MTP and [insert years] TIP meet the federal transportation conformity requirements in 40 CFR Part 93.

Clean Air Act (CAA) section 176(c) (42 U.S.C. 7506(c)) requires that federally funded or approved highway and transit activities are consistent with (“conform to”) the purpose of the State Implementation Plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS or any interim milestones. 42 U.S.C. 7506(c)(1). EPA’s transportation conformity rules establish the criteria and procedures for determining whether metropolitan transportation plans, transportation improvement programs (TIPs), and federally supported highway and transit projects conform to the SIP. 40 CFR Parts 51.390 and 93.

On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit in *South Coast Air Quality Mgmt. District v. EPA* (“*South Coast II*,” 882 F.3d 1138) held that transportation conformity determinations must be made in areas that were either nonattainment or maintenance for the 1997 ozone national ambient air quality standard (NAAQS) and attainment for the 2008 ozone NAAQS when the 1997 ozone NAAQS was revoked. These conformity determinations are required in these areas after February 16, 2019. The [insert name of 1997 ozone NAAQS area] was [insert “nonattainment” or “maintenance” as applicable to the area] at the time of the 1997 ozone NAAQS revocation on April 6, 2015 and was also designated attainment for the 2008 ozone NAAQS on May 21, 2012. Therefore, per the *South Coast II* decision, this conformity determination is being made for the 1997 ozone NAAQS on the MTP and TIP.

This conformity determination was completed consistent with CAA requirements, existing associated regulations at 40 CFR Parts 51.390 and 93, and the *South Coast II* decision, according to EPA’s *Transportation Conformity Guidance for the South Coast II Court Decision* issued on November 29, 2018.

■

1.0 Background *[optional – may be shortened as desired]*

1.1 Transportation Conformity Process

The concept of transportation conformity was introduced in the Clean Air Act (CAA) of 1977, which included a provision to ensure that transportation investments conform to a State implementation plan (SIP) for meeting the Federal air quality standards. Conformity requirements were made substantially more rigorous in the CAA Amendments of 1990. The transportation conformity regulations that detail implementation of the CAA requirements were first issued in November 1993, and have been amended several times. The regulations establish the criteria and procedures for transportation agencies to demonstrate that air pollutant emissions from metropolitan transportation plans, transportation improvement programs and projects are consistent with (“conform to”) the State’s air quality goals in the SIP. This document has been prepared for State and local officials who are involved in decision making on transportation investments.

Transportation conformity is required under CAA Section 176(c) to ensure that Federally-supported transportation activities are consistent with (“conform to”) the purpose of a State’s SIP. Transportation conformity establishes the framework for improving air quality to protect public health and the environment. Conformity to the purpose of the SIP means Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) funding and approvals are given to highway and transit activities that will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the relevant air quality standard, or any interim milestone.

[Insert a description of the 1997 ozone area, when it was designated, and if applicable when the area was re-designated maintenance. Also include the attainment status of the 2008 and 2015 ozone NAAQS]

■
2.0 [insert year or name] Metropolitan Transportation Plan

[add a short discussion of the Plan, similar to the TIP discussion in section 3.0; describe whether this action is for a new plan (Plan update) or amendment or neither.]

■
3.0 [insert years] Transportation Improvement Program (TIP)

[insert short discussion of TIP development process, including any local factors. Below is SAMPLE language of the type of information that may be included in this section. We do not suggest this language be used verbatim. Background information found in the TIP document would likely be appropriate in this section. Indicate whether this action is for a new TIP (TIP update) or a TIP amendment, if any.]

[SAMPLE ONLY: The [year-year] TIP is one part of the MPO's transportation planning process. The planning process includes the development of a Metropolitan Transportation Plan (MTP). The MPO adopts the long-range transportation plan. As projects in these long-range plans advance to implementation, they are programmed in the TIP for study, design, and construction, provided they attain environmental permits and other necessary clearances.

The purpose of the TIP is to set forth the MPO's short-term program for transportation projects. The TIP is prepared according to the MPO's procedures. An MPO Committee works with the State DOT and the appropriate transit operators in soliciting project proposals from the public and cities and towns, and in developing a draft TIP. Following public and agency review, the draft TIP is approved by the MPO, forwarded to the State DOT, then on to federal funding agencies – the Federal Highway Administration, and the Federal Transit Administration.]

4.0 Transportation Conformity Determination: General Process

Per the court's decision in *South Coast II*, beginning February 16, 2019, a transportation conformity determination for the 1997 ozone NAAQS will be needed in 1997 ozone NAAQS nonattainment and maintenance areas identified by EPA¹ for certain transportation activities, including updated or amended metropolitan MTPs and TIPs. Once US DOT makes its 1997 ozone NAAQS conformity determination for the [insert year/name] MTP and [insert years] TIP, conformity will be required no less frequently than every four years. This conformity determination report will address transportation conformity for the [insert year/name] MTP and [insert years] TIP.

¹ The areas identified can be found in EPA's "Transportation Conformity Guidance for the South Coast II Court Decision, EPA-420-B-18-050, available on the web at: www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation.

5.0 Transportation Conformity Requirements

5.1 Overview

On November 29, 2018, EPA issued Transportation Conformity Guidance for the South Coast II Court Decision² (EPA-420-B-18-050, November 2018) that addresses how transportation conformity determinations can be made in areas that were nonattainment or maintenance for the 1997 ozone NAAQS when the 1997 ozone NAAQS was revoked, but were designated attainment for the 2008 ozone NAAQS in EPA's original designations for this NAAQS (May 21, 2012).

The transportation conformity regulation at 40 CFR 93.109 sets forth the criteria and procedures for determining conformity. The conformity criteria for MTPs and TIPs include: latest planning assumptions (93.110), latest emissions model (93.111), consultation (93.112), transportation control measures (93.113(b) and (c)), and emissions budget and/or interim emissions (93.118 and/or 93.119). For the 1997 ozone NAAQS areas, transportation conformity for MTPs and TIPs for the 1997 ozone NAAQS can be demonstrated without a regional emissions analysis, per 40 CFR 93.109(c). This provision states that the regional emissions analysis requirement applies one year after the effective date of EPA's nonattainment designation for a NAAQS and until the effective date of revocation of such NAAQS for an area. The 1997 ozone NAAQS revocation was effective on April 6, 2015, and the *South Coast II* court upheld the revocation. As no regional emission analysis is required for this conformity determination, there is no requirement to use the latest emissions model, or budget or interim emissions tests.

Therefore, transportation conformity for the 1997 ozone NAAQS for [insert MTP, TIP, MPO] can be demonstrated by showing the remaining requirements in Table 1 in 40 CFR 93.109 have been met. These requirements, which are laid out in Section 2.4 of EPA's guidance and addressed below, include:

- Latest planning assumptions (93.110)
- Consultation (93.112)
- Transportation Control Measures (93.113)
- Fiscal constraint (93.108)

² Available from <https://www.epa.gov/sites/production/files/2018-11/documents/420b18050.pdf>

52 Latest Planning Assumptions

The use of latest planning assumptions in 40 CFR 93.110 of the conformity rule generally apply to regional emissions analysis. In the 1997 ozone NAAQS areas, the use of latest planning assumptions requirement applies to assumptions about transportation control measures (TCMs) in an approved SIP.

[Note: You must determine whether or not there are TCMs in an approved SIP in the area. This should be an agenda item for interagency consultation on this conformity determination.]

[If there are no TCMs in any SIP in the area:]

The *[insert state]* SIP does not include any TCMs, see also Section 5.4.

[If there are TCMs in an approved SIP in the area, this section would need to note it and discuss the latest planning assumptions with respect to this TCM.]

53 Consultation Requirements

The consultation requirements in 40 CFR 93.112 were addressed both for interagency consultation and public consultation.

Interagency consultation was conducted with *[insert names of participating interagency partners]*, FHWA, FTA, and EPA. *[Add details/description of interagency activities and process]*. Interagency consultation was conducted consistent with the *[insert state]* Conformity SIP *[if no Conformity SIP, insert name of MOU or other agreements related to interagency consultation for transportation conformity determinations, and if there are none, refer to the conformity regulation's requirements at 40 CFR 93.105]*.

Public consultation was conducted consistent with planning rule requirements in 23 CFR 450. *[Add details/description of specific public involvement activities.]*

[If including copies of any meeting minutes or public involvement notices, etc. as Appendices, add reference to those here.]

54 Timely Implementation of TCMs

[Note: You must determine whether or not there are TCMs in an approved SIP in the area. This should be an agenda item for interagency consultation on this conformity determination.]

[If there are no TCMs in any SIP in the area:]

The *[insert state]* SIP does not include any TCMs.

[If there are TCMs in an approved SIP in the area, add a discussion to document timely implementation per 40 CFR 93.113.]

5.5 Fiscal Constraint

Transportation conformity requirements in 40 CFR 93.108 state that transportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR part 450. The *[insert year/name]* MTP and *[insert years]* TIP are fiscally constrained, as demonstrated in *[add reference to section of MTP and TIP where fiscal constraint is discussed]*.

Conclusion

The conformity determination process completed for the *[insert year/name]* MTP and *[insert years]* TIP demonstrates that these planning documents meet the Clean Air Act and Transportation Conformity rule requirements for the 1997 ozone NAAQS.

APPENDIX

□

[insert Title]:
[add Public Involvement or Interagency Consultation Documents]

[insert Title]:

*[add MPO Resolution or
other documentation as
desired]*

Appendix 7 – Indiana ICG Grouped Project List⁸

Example Work Types that may be used for projects in the identified Group Project categories.
Bridge, Culvert and Small Structure Preservation: Includes BCPI, bridge painting, inspections, scour, deck overlay, pipe lining/replacements
Bridge Rehabilitation Or Repair
Bridge Deck Overlay
Bridge Deck Patching
Bridge Deck Sealing
Bridge Deck Barrier Wall
Bridge Thin Deck Overlay
Lower Pavement
Lower Pavement
Bridge Painting
Substructure Repair And Rehabilitation
Bridge Maintenance And Repair
Repair Or Replace Joints
Straighten Beam
Railing Replace Or Repair
Repairs To Approach Slab
Bridge Cleaning
Arch Reconstruction Or Repair
Repair/Replace Cathodic Protection
Bridge Channel Correction
Debris Removal From Channel
Channel Clearing And Protection
Scour Protection (Erosion)
Bridge Rehab-Pipe Lining
District Wide Bridge Maintenance
Small Structures & Drains Construction
Small Structure Replacement
Culvert Clean And Repair
Box Culvert Replacement
Small Structure Pipe Lining
Small Structure Paved Invert
Small Structure Maint and Repair
Paved Side Ditch Repair
Slotted Drain Or Inlet Replacement
Storm Sewer Repair Or Replacement
Other Sewer/Curb/Gutter Construction
Remove Bridge Abutments
Bridge Inspections
Underwater Bridge Inspections
Single Location Bridge Inspection

⁸ This list was compiled through coordination with INDOT and members of the ICG in July 2020. FHWA and the ICG members reviewed the regulations regarding grouped projects and identified categories/work

Pavement Preservation: Includes PPI projects, 1 & 2 lay overlays,
Patch And Rehab Pavement
Patch And Rehab Bituminous Pavement
Asphalt Patching
Crack Sealing
Drainage Inspection and Cleaning
Patch and Rehab PCC Pavement
PCCP Patching
Profiling, PCCP
PCCP Cleaning and Sealing Joints
Undersealing
Retrofit Joint Load Transfer
Resurface over Asphalt Pavement
HMA Overlay, Preventive Maintenance
Surface Treatment, PM
Surface Treatment, Thin HMA Overlay
Surface Treatment, Chip Seal
Surface Treatment, Microsurface
Surface Treatment, Ultrathin Bonded Wearing Course
Resurface PCC Pavement (Partial 3/R Standards)
Crack & Seat PCCP & HMA Overlay
Concrete Pavement Restoration (CPR)
Crack & Seat Composite Pavement & HMA Overlay
Crack & Seat PCCP & HMA Overlay
Repair PCCP & HMA Overlay
Rubblize PCCP & HMA Overlay
PCCP on PCC Pavement
Rubblize Composite & HMA Overlay
Wedge And Level
Shoulder Rehabilitation And Repair
Institution & Park Road Maintenance

Guardrail and Median Protection/Cable Barriers
Install New Guard Rail
Guardrail, Maintenance Or Repair
Guardrail, Maintenance
Replace Guard Rail
Repair Guard Rail
Guard Rail Attenuators, New Or Modernize
Barrier Wall
Repair Or Replace Barrier Wall
Glare Screen And/Or Extensions
Install New Cable Rail Barriers
Cable Rail Barrier Maintenance or Repair

types of projects that align with those regulations. FHWA and the ICG members concurred that the categories and identified work types are consistent with the exempt project classifications are consistent with the exempt project classifications included in 40 CFR 93. This list is not exhaustive. The full list of exempt project types can be found in 40 CFR 93.126 and 93.127. The ICG will review/consider revisions to the categories and work types as needed.

Traffic Signal and Lighting System Improvements
Signs, Lighting, Signals And Markings
Lighting
Lighting Installation / Maintenance
Install New Continuous Lighting
Modernize Continuous Lighting
Install Lighting
Repair Or Replace Lighting
Lighting Maintenance
Tower Lighting
Traffic Signals
Traffic Signals, New Or Modernized
New Signal Installation
Traffic Signals Modernization
Install Loop Detector
Closed Loop Interconnect System
Freeway Traffic Control System
New Flasher Installation
Flashers, Modernize
Traffic Signal Maintenance
Traffic Signal Repair
Pedestrian Flashing Beacons, Installed
Traffic Signal Visibility Improvements
Traffic Hardware Modernization
Traffic, Other
Intelligent Transportation Systems (ITS)
ITS Traveler Information Systems
New Dynamic Message Sign (Dms)
Modernize Dynamic Message Sign (Dms)
New Highway Advisory Radio (Har)
Modernize Dynamic Message Sign (Har)
Software Dev And App For Dyn. Mess Sign
ITS Traffic Management Systems
Work Zone Traffic Management Systems
Software Dev And App For Traf.Mess. Sys.
ITS Traffic Monitoring Systems
New Traf Flow Detection Devices/Hardware
Mod Traf Flow Detection Devices/Hardware
Software Dev And App For Traf. Flow Det.
ITS Communications Systems
New Communication Towers
Modernized Communications Towers
New Fiber Optic Systems
Modernized Fiber Optic Systems
New Wireless Communications Systems

Modernized Wireless Communication System
Software Dev And App For Wireless System
ITS Operations And Maintenance Contracts
ITS Devices Maintenance Contracts
ITS Program Contracted Services
ITS Program Equipment

Signing, Marking, Striping and Rumble Strips
Signing
Signing Installation / Repair
New Sign Installation
Sign Modernization (Series Of Units)
Overhead Sign Install
Overhead Sign Repair
Un-Signalized Intersection Sign & Marking Visibility Imp
Curve Sign and Marking Visibility Improvements
Pavement Markings
Line, Paint
Line, Thermoplastic
Raised Pavement Markings, New
Raised Pavement Markings, Refurbished
Line, Preformed Plastic
Centerline & Edge Line Rumble Stripes Installation
Centerline Rumble Stripes Installation
Edge Line Rumble Stripes Installation

Rail Crossing Protection
Railroad Work
Railroad Protection
Railroad Protection & Surface

Bicycle/Pedestrian Facilities (identified in local or state Transition Plans to meet requirements of ADA)
Construct ADA Approved Sidewalk Ramps
Small Community Sidewalk

Statewide and Non-Construction Activities
Maintenance: Tree trimming, mowing, fence replacement/repair
Purchases: Drones, survey equipment, data, software, licensing/ fees, etc.
State Police Patrols
Inspection Contracts
Statewide consultant/contract services: Plan Review, Testing, Utility coordination, Dispatch Operations, HELPERS, etc.

Appendix 8 – Template Email Requesting Formal Consultation

MPO Request FHWA Begin Formal Consultation

Hello [FHWA Liaison],

The [MPO Policy Committee Name] approved/adopted the [MTP New or Amendment / TIP New or Amendment] at the meeting on [Date]. Notice of the draft amendment and a request for informal review was sent to the ICG on [enter date of initial consultation request]. No comments were received. The xx MPO is requesting that FHWA initiate the formal transportation conformity process.

Amendment xx includes X number of project amendments to the FY xx-xx TIP or XXXX MTP. X number of projects have been determined as exempt by the MPO, and X number have been determined nonexempt. (For Bi-state MPOs only: There are x number of exempt projects, and x number of nonexempt projects in KY/IN/OH). In accordance with the XX MPO's Public Participation Plan, the draft amendment was made available from xx/xx to xx/xx. No public comments were received (or if comments were received, provide a brief summary and the outcome).

I've attached the resolution(s) and included links below (or attached documents) for the [MPO Name] documents and Conformity Report, as well as links to additional project lists for the airshed.

Please let me know if you need anything else to initiate the process. Thank you.

(Link to following documents as applicable below)

- MTP / Amendment
- TIP / Amendment
 - Note projects as exempt/non-exempt, or separate lists
- Conformity Determination Report
- INDOT STIP Amendments in Non-MPA / Rural Area within airshed
- Most current MTP / TIP projects lists for any other MPO in airshed

Appendix 9 – Template Email Initiating Formal Consultation

Hello [members of Indiana ICG],

The xx MPO recently amended their FYxx/xx TIP and/or xxxx MTP and has requested a conformity determination for the amended plan(s).

Amendment xx includes X number of project amendments to the FY xx-xx TIP or XXXX MTP. X number of projects have been determined as exempt by the MPO, and X number have been determined nonexempt. (For Bi-state MPOs only: There are x number of exempt projects, and x number of nonexempt projects in KY/IN/OH). In accordance with the XX MPO's Public Participation Plan, the draft amendment was made available from xx/xx to xx/xx. No public comments were received (or if comments were received, provide a brief summary and the outcome). The [MPO Policy Committee Name] approved/adopted the [MTP New or Amendment / TIP New or Amendment] at the meeting on [Date].

The most recent Transportation Conformity Report is linked below, along with links to information about the amendment(s) and the most recent project lists.

Please review and provide your comments or concurrence documentation by xx/xx/xxxx.

If we do not receive any comments from your agency by the above referenced date, we will presume that your agency concurs with a positive conformity determination.

MPO Resolution(s)
Conformity Report
Plan Links (if applicable)
Project List(s)

Let me know if you have questions or need any additional information.

Appendix 10 – Conformity Determination Letter Template



U.S. Department
of Transportation

Federal Highway Administration
Indiana Division
575 N. Pennsylvania St., Rm 254
Indianapolis, IN 46204-1576

[MMMM, DD, YYYY]

[FIRST & LAST NAME], Director
Technical Planning & Programming Division
Indiana Department of Transportation
100 N Senate Ave. N925
Indianapolis, IN 46204

Dear [Mr., Mrs., Ms., Miss] [LAST NAME]:

The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) have completed our review of the of the documents necessary to make an air quality conformity determination for the [PRIMARY CITY] conformity area comprising of [LIST ALL COUNTIES] Counties. The need for this new conformity determination stems from an [update/amendment] to the [MPO NAME] ([MPO ACRONYM]) [NAME OF PLANNING DOCUMENT] ([MTP/TIP]) ([NAME OF UPDATE/AMENDMENT]).

[LIST COUNTY] is designated as Nonattainment for [NAME POLLUTANTS]. Additionally, [LIST COUNTY] is designated as Maintenance for [NAME POLLUTANTS] until [MMMM, DD, YYYY].

Appropriate consultation and public involvement on the [MTP/TIP] [amendment/update] was completed. The US Environmental Protection Agency, the Indiana Department of Environmental Management, and the Indiana Department of Transportation completed their reviews and have no objection to the USDOT determination that the planning documents conform to air quality conformity requirements.

Therefore, FHWA and FTA affirms the following planning documents conform to air quality conformity rule requirements:

[MPO ACRONYM] [YEAR] MTP ([original or including AMENDMENT NAME])
[MPO ACRONYM] [YEAR-YEAR] TIP ([original or including AMENDMENT NAME])

This conformity determination letter supersedes all previous conformity determination letters for this MPO. Conformity determination letters issued for amended MTPs (i.e., MTPs that have not been updated in accordance with the requirements outlined in 23 CFR 450.324) do not restart the conformity clock for those documents.

If you have any questions, please contact [FHWA POC FIRST & LAST NAME], FHWA, at [XXX-XXX-XXX] or [email]; or [FTA POC FIRST & LAST NAME], FTA, at [XXX-XXX-XXX] or [email].

Sincerely,

[FIRST & LAST NAME]
Division Administrator
FHWA Indiana Division

cc: (transmitted by e-mail)

[MPO DIRECTOR], [MPO ACRONYM]

[MPO CONFORMITY COORDINATOR], [MPO ACRONYM]

[INDOT MPO PLANNING LIAISON], INDOT

[INDOT TRANSIT COORDINATOR], INDOT

[IDEM ICG REPRESENTATIVE], IDEM

[EPA ICG REPRESENTATIVE], EPA

[FTA ICG REPRESENTATIVE], FTA

Appendix 11 – Regional Significance Guidance

A “regionally significant project” is defined by 40 CFR Part 93 as “a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc. or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.”

Projects that are regionally significant, regardless of funding source, should be included in the regional emissions analysis. The determination of other regionally significant projects for the purposes of regional emissions analysis may vary in accordance with the interagency consultation procedures included in 40 CFR §93.105(c)(1)(ii) of the transportation conformity rule. Regionally significant additions or modifications to the transportation system should be identified and described in the following level of detail per §93.106(a)(2)(ii):

- Additions or modifications to highway segments should identify the design concept and scope sufficiently (e.g., number of lanes in each section, intersections, interchange locations if the facility is limited access) to model travel time under various traffic volumes, consistent with MPO modeling methods,
- Transit facilities, equipment and services proposed for the future should be defined in terms and design concept and scope and operating policies sufficient to model transit ridership (where applicable or required), and
- Additions or modifications to the transportation network should be sufficiently described to show a reasonable relationship between forecasted land use and the future transportation system, if applicable.

Suggested minimum *Regional Significance Guidance* can be found in Appendix 2. An MPO can adopt more restrictive thresholds for their MPO area if they like.

This document is being provided as a guidance resource for local municipalities and project implementers to:

1. Provide information on the regional air quality conformity process
2. Help define what is meant by the term “regionally significant project”
3. Provide guidance on expected project-level informational requirements of local municipalities.

This document does not in any way change, modify, or supersede any regulatory or statutory requirements of the Clean Air Act, Clean Air Act Amendments, or other related federal and state legislation. The final determination on whether a project can be considered regionally significant is reserved by the ICG.

MPOs provide the conformity process as a service to local governments. By excluding regionally significant projects from the regional emissions analysis, project implementers may risk a violation of the Clean Air Act, and non-conformity for the MTP and TIP.

This guidance is intended to help the MPO and project sponsors to comply with the following federal regulation:

40 CFR Part 93 (Transportation Conformity Rule Amendments: Flexibility and Streamlining; Final Rule)

§93.101 (Definitions) *Regionally significant project* means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.;

§93.105 (Consultation) **(c)** (Interagency Consultation Procedures: Specific Processes) *Interagency consultation procedures shall also include the following specific processes: (ii) Determining which minor arterials and other transportation projects should be considered "regionally significant" 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), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP.; and*

§93.121 (Requirements for adoption or approval of projects by other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws.) **(a)** *Except as provided in paragraph (b) of this section, no recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met: (1) The project was included in the first three years of the most recently conforming transportation plan and TIP (or the conformity determination's regional emissions analysis), even if conformity status is currently lapsed; and the project's design concept and scope have not changed significantly from those analyses; or (2)*

There is a currently conforming transportation plan and TIP, and a new regional emissions analysis including the project and the currently conforming plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of §93.118 and/or 93.119 for a project not from a conforming transportation plan and TIP). (b) In isolated rural nonattainment areas and maintenance areas subject to §93.109(g), no recipient...

The MPO transportation network models typically include all roads functionally classified as a collector and higher and all interchange ramps. The collectors and some local roads are included to accurately load traffic onto the higher classification roads, including the minor arterials, principal arterials, expressways and interstates. However, inclusion of collectors and local roads in the travel model network does not imply that they are considered regionally significant. All roads functionally classified as Minor Arterial or above should be considered as regionally significant. This includes all freeways, expressways, interchange ramps, principal arterials and minor arterials that are determined by the group (through consultation) to be regionally significant. All fixed guide-way transit services, including commuter rail are regionally significant. Fixed route bus services can also be regionally significant when they offer a significant alternative to regional highway travel.

Transportation projects, whether single or multi-jurisdictional, that modify these facilities can be regionally significant. Individually, projects can be considered as regionally significant when they are above certain thresholds. Collectively, when a series of smaller projects on a regionally significant facility are completed, the overall improvements can be regionally significant.

The minimum definition that the ICG uses to define what is and what is not “Regionally Significant” are listed in the following table:

Interstates, Expressways, Toll Roads	
<u>Expansion Type</u>	<u>Regionally Significant when ...</u>
New Segment	Any
Added Through Lanes	Any
Continuous Auxiliary Lanes	> ¼ mile
New Interchanges	Any
Modification of Existing Interchanges	ICG consultation required to determine significance

Principal Arterials	
<u>Expansion Type</u>	<u>Regionally Significant when ...</u>
New Segment	Any
Added Through Lanes	Any
Continuous Auxiliary Lanes	> 1 mile
New Interchanges	Any
Modification of Existing Interchanges	ICG consultation required to determine significance
Separation of existing railroad grade crossings	Not Regionally Significant

Minor Arterials	
<u>Expansion Type</u>	<u>Regionally Significant when ...</u>
New Segment	> 1 Mile
	$\frac{3}{4}$ to 1 mile, ICG consultation required to determine significance
	< $\frac{3}{4}$ Mile, not Regionally Significant
Added Through Lanes	> 1 Mile
	$\frac{3}{4}$ to 1 mile, ICG consultation Required to determine significance
	< $\frac{3}{4}$ mile, not Regionally Significant
Continuous Auxiliary Lanes	> 1 mile
Separation of existing railroad grade crossings	Not Regionally Significant

Rail and Fixed Guide-way Transit	
<u>Expansion Type</u>	<u>Regionally Significant when ...</u>
New Route or Service	Any
Route Extension with Station	> 1 mile
Added track or guide-way capacity	> 1 mile
New Intermediate Station	ICG consultation required to determine significance

Bus and Demand Response Transit	
<u>Expansion Type</u>	<u>Regionally Significant when ...</u>
New Fixed Route	ICG consultation required to determine significance
New Demand Response Service	Not Regionally Significant
Added Service to existing	Not Regionally Significant

New segments or added through lanes on arterials that are also associated with large land development projects may need AQ consultation even if the project is below the threshold in the table. Land development projects can be regionally significant when they have the potential to generate many trips or vehicle-miles of travel. Such developments are incorporated into the regional model during the update of socioeconomic forecasts, at the beginning of the update cycle for a new regional transportation plan. Local agencies should provide their comprehensive plans to the MPO as they're updated, which reflect the known development projects.

Local agencies should proactively include anticipated developments in their comprehensive plans without specific reference to potential high profile private sector developments.

Implementation

At the start of each conformity cycle, the MPO should solicit new project and related development information from all local agencies, so that the analysis uses the latest planning assumptions. Local agencies that wish to precede with transportation

improvement projects, regardless of funding sources, should respond to the solicitation to be sure that their projects are included in the regional emissions analysis. Projects that are excluded from the analysis may be delayed until the next conformity cycle (a minimum of six months), when they could be included in the regional emissions or transportation conformity (for 97 Ozone only) analysis. In addition, at the start of each plan update cycle the MPO should request an update of land development that local agencies anticipate, for inclusion in the regional emissions analysis, by including updated population, household and employment data.