

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.

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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.