

TRANSPORTATION CONFORMITY DOCUMENT



EMPO 2040 METROPOLITAN TRANSPORTATION PLAN EMPO FY 2018 - 2021 TRANSPORTATION IMPROVEMENT PROGRAM

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BACKGROUND

Transportation conformity is being established for the Metropolitan Transportation Plan (MTP) 2040 and the FY 2018-2021 Transportation Improvement Program (TIP) adopted by the Evansville MPO Policy Board. The conformity is needed as a result of a recent 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 II*,” 882 F.3d 1138), which struck down portions of the 2008 Ozone NAAQS State Implementation Plan Requirements Rule concerning the Ozone National Ambient Air Quality Standards (NAAQS) as well as the anti-backsliding requirements associated with the revocation of the 1997 Ozone NAAQS.

Areas such as Vanderburgh and Warrick Counties that were maintenance areas for the 1997 Ozone NAAQS at the time of revocation and are designated as attainment for the 2008 Ozone NAAQS, have not been required to make transportation conformity determinations for any Ozone NAAQS since the 1997 Ozone NAAQS was revoked in April 2015. Under the recent court decision, these areas, referred to as orphan areas rather than non-attainment or maintenance areas, necessitate new regional conformity determinations.

More information about the conformity determination process for orphan areas and about the proposed transportation plan amendment(s) is provided below.

CONFORMITY

The U.S. Environmental Protection Agency (EPA) has issued guidance to assist in the implementation of the 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 II*,” 882 F.3d 1138). The guidance addresses how transportation conformity determinations can be made in areas that were either non-attainment or maintenance for the 1997 Ozone NAAQS when the standard was revoked, depending on their designations for the subsequent 2008 and 2015 Ozone NAAQS. Evansville MPO was defined as an orphan maintenance area in the court decision as the region was a maintenance area for the 1997 Ozone NAAQS at the time of its revocation (80 FR 12264, March 6, 2015) and was designated attainment for the 2008 Ozone NAAQS in EPA’s original designations for the NAAQS (77 FR 30160, May 21, 2012).

The transportation conformity regulation at 40 CFR 93.109 sets forth the criteria and procedures for determining conformity. In orphan areas that have one or more MPOs, transportation conformity for transportation plans and TIPs for the 1997 ozone NAAQS can be demonstrated without a regional emissions analysis pursuant to 40 CFR 93.109(c). Paragraph (c) states:

This provision applies one year after the effective date of EPA’s nonattainment designation for a NAAQS in accordance with §93.102(d) and until the effective date of revocation of such NAAQS for an area.

The *South Coast II* court decision upheld EPA's revocation of the 1997 Ozone NAAQS, which was effective on April 6, 2015. EPA's current transportation conformity regulation requires a regional emissions analysis only during the time period beginning one year after a nonattainment designation for a particular NAAQS until the effective date of revocation of that NAAQS (40 CFR 93.109(c)). Therefore, pursuant to this regulation, a regional emissions analysis is not required for conformity determinations for the 1997 Ozone NAAQS because that NAAQS has been revoked (80 FR 12264).

As no regional emissions analysis is required in orphan areas, there is no requirement to use the latest emissions model (40 CFR 93.111), or use either the emissions budget test or interim emissions test (40 CFR 93.118 and 93.119). Therefore, transportation conformity for the 1997 Ozone NAAQS can be demonstrated by an MPO and DOT for transportation plans and TIPs by showing that the remaining criteria in 40 CFR 93.109, and 40 CFR 93.108, have been met:

Use of the latest planning assumptions, per 40 CFR 93.110

These criteria generally apply to regional emissions analyses. In orphan areas, ensuring the latest planning assumptions are used applies to information about TCMs in an approved SIP (40 CFR 93.113). No Traffic Control Measures (TCM) are included in the SIP for the Vanderburgh and Warrick County Orphan Maintenance Area.

Development of the MTP 2040 included updating the land use assumptions derived from the estimates of current and future population, employment, travel, and congestion. All forecasts utilized the best available planning assumptions concerning development and socio-economic forecasts to the year 2040.

Consultation requirements, according to 40 CFR 93.112

An Interagency Consultation Group (ICG) is reviewing the draft copy of this document concurrent with the 15-day public comment period to ensure all requirements of the conformity determination have been met. The ICG members have the opportunity to request a conference call should an agency want to discuss the document with the ICG.

Timely implementation of any approved SIP transportation control measures (TCMs), according to the requirements in 40 CFR 93.113

No Traffic Control Measures (TCM) are included in the SIP for the Vanderburgh and Warrick County Orphan Maintenance Area.

Fiscal constraint, according to 40 CFR 93.108

The MTP 2040 includes a financial plan that demonstrates how the adopted plan can be implemented. The financial plan compares the estimates of funds that are reasonably expected to be available for transportation uses, including transit, and the cost of

constructing, maintaining and operating the total (existing, plus planned) transportation system over the period of the plan.

The FY 2018-2021 TIP includes a summary of the fiscal constraint analysis for local highway projects listed in the TIP document. The details for the federal funds and programmed amounts are also located in the document. The difference between funds available and the programmed amounts is anticipated to be recovered with other federal fund surplus, project costs savings, and/or additional local contributions. The local match required for federally funded projects is supplied from a variety of local sources including LRSA, CBF, EDIT, MVHA, LOHUT, TIF and others. The LPA is required, prior to beginning projects, to have identified the specific source and amount required for their local match.

CONCLUSION

The conformity determination conducted by the Evansville MPO was subject to a public comment period running from December 26, 2018 through January 10, 2019 during which no comments were received. This conformity determination document concludes that the MTP 2040 and the FY 2018 - 2021 TIP satisfy all applicable criteria and procedures in the U.S. EPA guidance to assist in the implementation of the 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 II," 882 F.3d 1138). The Evansville MPO Policy Committee adopted the conformity determination document at their regularly scheduled January 10, 2019 meeting.