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# Transportation Conformity Determination Report for the 1997 Ozone NAAQS

October 9, 2019

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# Executive Summary

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As part of its transportation planning process, the Michiana Area Council of Governments (MACOG) completed the transportation conformity process for the Michiana on the Move: 2045 Transportation Plan and SFY 2019-2024 TIP. This report documents that the 2045 Transportation Plan and SFY 2019-2024 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ozone national ambient air quality standard (NAAQS) and attainment for the 2008 Ozone NAAQS when the 1997 Ozone NAAQS was revoked.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 South Bend-Elkhart area was a maintenance area at the time of the 1997 Ozone NAAQS revocation on April 6, 2015 and was also designated unclassifiable / 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 Transportation Plan 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

### 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 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 the Federal Highway Administration (FHWA) and the 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.

On April 15, 2004, the U.S. EPA designated St. Joseph and Elkhart counties as basic nonattainment and subject to the new 8-hour ozone requirements. This designation required the development of a plan to reduce volatile organic compounds (VOCs) and oxides of nitrogen (NOx) emissions as well as a demonstration that the area will meet the 8-hour ozone standard by June 15, 2009. On April 18, 2007, the U.S. EPA re-designated the South Bend-Elkhart area (including all of St. Joseph and Elkhart County) to attainment for ozone based on a request from the Indiana Department of Environmental Management (IDEM) in 2006. Since the re-designation, air quality in the region has continued to improve with the area being found in attainment of the stricter 2008 and 2015 Ozone NAAQS.

## 2.0 Michiana on the Move: 2045 Transportation Plan

Michiana on the Move is a long range plan that identifies regionally significant transportation needs and issues in the region. It is a fiscally constrained document that includes a demographic analysis of the community as well as an examination of travel patterns and trends. The planning process includes an analysis of alternatives to meet projected future demands and for providing a safe and efficient transportation system that meets mobility while not creating adverse impacts to the environment.

The new 2045 Transportation Plan addresses the following:

- Policies, strategies, and projects for the future
- Projected demand for transportation services over 20 years
- Regional land use, development, housing, employment forecasts
- Costs estimates and reasonably available financial sources

## 3.0 2020-2024 Transportation Improvement Program (TIP)

The 2020-2024 Transportation Improvement Program (TIP) is a four year, short-range plan that provides information regarding the transportation projects that are federally funded in the MACOG region.

The TIP includes projects for all modes of surface transportation including highways and streets, active transportation, and public transportation. Projects listed are developed in cooperation with state and local agencies.

The approved TIP can be amended or modified to add or delete projects and adjust for changes in scope, cost, or timeframe. Amendments are required to go through Policy Board approval and subject for public review, while minor changes can be made by Administrative Modifications.

## 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 the EPA for certain transportation activities, including updated or amended Transportation Plans and TIPs. Once the US DOT makes its 1997 Ozone NAAQS conformity determination for the Michiana on the Move: 2045 Transportation Plan and SFY 2020-2024 TIP, conformity will be required no less frequently than every four years. This conformity determination report will address transportation conformity for the Michiana on the Move: 2045 Transportation Plan and SFY 2020-2024 TIP.

## 5.0 Transportation Conformity Requirements

### 5.1 Overview

On November 29, 2018, the EPA issued Transportation Conformity Guidance for the South Coast II Court Decision (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 Transportation Plans 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 Transportation Plans 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 and/or interim emissions tests.

Therefore, transportation conformity for the 1997 Ozone NAAQS for MACOG's Michiana on the Move: 2045 Transportation Plan and SFY 2019-2024 TIP 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)

### 5.2 Latest Planning Assumptions

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

The SIP for St. Joseph and Elkhart County does not include any TCMs, see Section 5.4.

### 5.3 Consultation Requirements

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

Interagency consultation was conducted with IDEM, FHWA, FTA, and EPA. A draft of the Transportation Conformity Determination Report for the 1997 Ozone NAAQS was provided with the final project list of the 2045 Transportation Plan for review via email. A conference call to formally discuss the documents was scheduled for Thursday, August 29, 2019. Interagency consultation was conducted consistent with the Indiana Conformity SIP.

Public consultation was conducted consistent with planning rule requirements in 23 CFR 450. A public comment period was held from September 3, 2019 through October 2, 2019 with an open house being held in MACOG's offices on September 17, 2019.

### 5.4 Timely Implementation of TCMs

The Indiana SIP does not include any TCMs.

### 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 2045 TP and 2020-2024 TIP are fiscally constrained, as demonstrated in the financial chapters of their respective plans.

## Conclusion

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The conformity determination process completed for the 2045 TP and 2020-2024 TIP demonstrates that these planning documents meet the Clean Air Act and Transportation Conformity rule requirements for the 1997 ozone NAAQS.