
**Transportation Conformity Determination Report for
the 1997 ozone NAAQS**

Evansville Metropolitan Planning Organization

*2022–2026 Transportation
Improvement Program,
Amendment 4*

Evansville MPO Policy Committee Adoption: April 26, 2022

USDOT Conformity Finding: May 24, 2022



U.S. Department
of Transportation

May 24, 2022

Federal Transit Administration **Federal Highway Administration**
Region V Indiana Division
200 West Adams St., Suite 320 575 N. Pennsylvania St., Rm 254
Chicago, IL 60606-5253 Indianapolis, IN 46204-1576

Roy Nunnally, Director
Asset Management Division
Indiana Department of Transportation
100 N Senate Ave. N925
Indianapolis, IN 46204

Dear Mr. Nunnally:

The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) have completed our review of the documents necessary to make an air quality conformity finding for the Evansville Metropolitan Planning Organization's (EMPO) planning documents. The Evansville Metropolitan Planning Area is within the 2-county Evansville air quality conformity area and is comprised of Vanderburg and Warrick Counties. The need for this new conformity finding stems from an amendment to the EMPO 2022-2026 Transportation Improvement Program (TIP) (Amendment 4).

Vanderburg and Warrick Counties are designated as Maintenance for the 1997 Ozone Standard until October 19, 2027.

Appropriate consultation and public involvement on the TIP amendment was completed. The Indiana Department of Environmental Management, the Indiana Department of Transportation, and the US Environmental Protection Agency have completed their reviews and have determined that air quality conformity requirements have been met.

This conformity finding supersedes all previous conformity findings for this MPO. Therefore, FHWA and FTA affirms the following planning documents conform to air quality conformity rule requirements:

Evansville MPO 2045 Metropolitan Transportation Plan (including Amendment #1)
Evansville MPO 2020-2024 TIP (including Amendment dated March 11, 2021)
Evansville MPO 2022-2026 TIP (including Amendment 4, November 10, 2021)

Please note that the 2022-2026 TIP is not incorporated into INDOT's current Statewide Transportation Improvement Program (STIP), therefore, the 2020-2024 TIP is the only TIP officially recognized by FHWA and FTA until the 2022-2026 STIP has been approved and contains reference to the 2022-2026 EMPO TIP.

If you have any questions, please feel free to contact Karstin Carmany-George, FHWA, at 317-226-5629 or k.carmanygeorge@dot.gov; or Cecilia Crenshaw-Godfrey, FTA, at 312-705-1268 or cecilia.crenshaw@dot.gov.

Sincerely,

**KELLEY
BROOKINS** Digitally signed by
KELLEY BROOKINS
Date: 2022.05.23
09:34:33 -05'00'

Kelley Brookins
Regional Administrator
FTA Region V

Sincerely,

**JERMAINE
R HANNON** Digitally signed by
JERMAINE R HANNON
Date: 2022.05.24
11:09:07 -04'00'

Jermaine R. Hannon
Division Administrator
FHWA Indiana Division

cc: (transmitted by e-mail)

Seyed Shokouhzadeh, EMPO
Pam Drach, EMPO
Jay Mitchell, INDOT
Bernadette Dupont, FHWA
Cecilia Crenshaw-Godfrey, FTA
Jason Ciavarella, FTA
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Acknowledgements

This Transportation Conformity Report for 2022-2026 Transportation Improvement Program (TIP) Amendment 4 was prepared by the Evansville MPO. Individuals from the following agencies contributed their efforts towards the completion of the Transportation Conformity Determination Report. They include:

- INDOT
- IDEM
- EPA
- FHWA
- FTA
- KYTC

1.0 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.

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. Vanderburgh and Warrick Counties were maintenance areas 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.



2.0 Current Conformity Status

The Metropolitan Transportation Plan (MTP) 2045 was adopted by the Evansville MPO Policy Committee on March 14, 2019 and the Air Quality Conformity Determination was approved by the U.S. Department of Transportation (USDOT) on April 5, 2019. An amendment to the MTP 2045 was adopted along with the 2022-2026 Transportation Improvement Program (TIP) on March 11, 2021. The USDOT conformity finding on the amended MTP 2045 and the 2022-2026 TIP was issued May 3, 2021.

The conformity determination for the amended MTP and 2022-2026 TIP is Chapter 8 in the MTP document, and can be found at http://www.evansvillempo.com/Docs/MTP/MTP_2045/FINAL_MTP2045.pdf



3.0 2022 – 2026 Transportation Improvement Program (TIP) Amendment 4

The 2022-2026 TIP is one part of the Evansville MPO's transportation planning process. The planning process includes the development of a Metropolitan Transportation Plan (MTP) which is adopted by the MPO. As projects in the MTP advance to implementation, they are programmed in the TIP for study, design, and construction, provided they attain environmental permits and other necessary clearances.

Amendment 4, as approved by the Policy Committee on November 10, 2021, involved amending the 2022-2026 TIP to:

- remove the local portion of a state contract and set the local project up as a separate contract;
- add a line item (designation number) for the Indiana approach to the I-69 Ohio River Crossing project with funding for preliminary engineering, right of way, utility and construction in fiscal years 2022, 2023, and 2024.

The I-69 Ohio River Crossing project is considered a non-exempt project and is therefore subject to the determination of conformity when amended in the TIP.

Since I-69 Ohio River Crossing project is already included in the amended MTP 2045, and the proposed TIP amendment action is intended to continue the implementation of the project consistent with the amended MTP, it was previously accounted for in the conformity review process used to determine transportation conformity for the Amended MTP 2045 and the 2022-2026 TIP.

4.0 Transportation Conformity Requirements

4.1 Overview

On November 29, 2018, EPA issued *Transportation Conformity Guidance for the South Coast II Court Decision*¹ (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 MTP 2045, 2022-2026 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)

4.2 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

¹ Available from <https://www.epa.gov/sites/production/files/2018-11/documents/420b18050.pdf>

areas, the use of latest planning assumptions requirement applies to assumptions about transportation control measures (TCMs) in an approved SIP. The Indiana SIP does not include any TCMs for the Vanderburgh and Warrick County Orphan Maintenance Area. (see also Section 5.4.)

The development of the MTP 2045 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 2045. The I-69 Ohio River Crossing project, as presented in Amendment 4, is consistent with the MTP 2045 in design concept, scope, and timeframes required to achieve the transportation system envisioned by the transportation plan. There have been no changes to the assumptions since the approval of the MTP 2045 in April 2019.

4.3 Consultation Requirements

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

Interagency consultation was conducted with INDOT, IDEM, FHWA, FTA, and EPA. During the development of the conformity determination, the consulting agencies were sent a copy of the draft conformity report and the 2022-2026 TIP Amendment 4 for review via email. For the conformity analysis, the procedures used and all of the major assumptions were subject to discussion, review, and consensus approval by the consulting agencies. Interagency consultation was conducted consistent with the Indiana Conformity Consultation Guidance and the Conformity SIP as applicable. None of the ICG members requested a conference call.

Public consultation was conducted consistent with planning rule requirements in 23 CFR 450. The Evansville MPO released the conformity documentation for a public comment period from April 7, 2022 through April 21, 2022. No public comments were received.

4.4 Timely Implementation of TCMs

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

4.5 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 MPO has demonstrated the amended MTP 2045 and 2022-2026 TIP are fiscally constrained.

With respect to the 2022-2026 TIP Amendment 4, the Indiana Department of Transportation (INDOT) and the Kentucky Transportation Cabinet (KYTC) are the lead agencies for financial planning for the I-69 Ohio River Crossing project. As project sponsors, INDOT and KYTC document the project funding and demonstrate fiscal constraint in the financial portion of their respective STIPs. Additionally, the financial information specific to the I-69 Ohio River Crossing can be found in the Financial Plan for the I-69 Ohio River Crossing project as required for projects costing \$500 million or more. Link to the Initial Financial Plan https://i69ohiorivercrossing.com/wp-content/uploads/2021/10/I-69-ORX-IFP-2021_Certified_Approved.pdf

Conclusion

The conformity determination process completed for the 2022-2026 TIP Amendment 4 demonstrates that the amendment meets the Clean Air Act and Transportation Conformity rule requirements for the 1997 ozone NAAQS.

APPENDIX

Appendix A:

RESOLUTION NO. CD-1

A RESOLUTION APPROVING THE CONFORMITY DETERMINATION FOR AMENDMENT 4 TO THE EVANSVILLE METROPOLITAN PLANNING ORGANIZATION'S FY 2022 - 2026 TRANSPORTATION IMPROVEMENT PROGRAM

WHEREAS, the Evansville Metropolitan Planning Organization is the organization designated by the Governor as the Metropolitan Planning Organization responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134 (Federal-Aid Highway planning requirements), and capable of meeting the requirements of 49 U.S.C. 5303 (Federal Transit planning requirements) in the Evansville Urbanized Area; and

WHEREAS, the Policy Committee is the policy body of the Evansville Metropolitan Planning Organization (MPO); and

WHEREAS, all federally funded highway and transit improvements within the MPO planning area must be included in the MPO Transportation Improvement Program (TIP) prior to the expenditure of federal funds; and

WHEREAS, the 2022-2026 TIP amendment 4, as adopted on November 10, 2022, is consistent with the MPO *Metropolitan Transportation Plan 2045* as adopted on March 11, 2021 and will result in a TIP that remains fiscally constrained; and

WHEREAS, the opportunity for public participation has been provided per the MPO Participation Plan; and

WHEREAS the MPO has complied with the Clean Air Act Amendments of 1990 (CAAA) requirements as they pertain to the MTP 2045, 2022-2026 TIP and amendment 4 to the 2022-2026 TIP; and

WHEREAS the conformity determination concludes that the 2022-2026 TIP including amendment 4 conforms to the State Implementation Plan for Air Quality in accordance with the United States Environmental Protection Agency's Transportation Conformity Guidance for the South Coast II Court Decision, made available November 2018;

BE IT THEREFORE RESOLVED, on this 26th day of April 2022, the transportation conformity determination for the MPO FY 2022 – 2026 Transportation Improvement Program is approved by the Policy Committee of the MPO.



Mr. Jack Corn, Jr., Chairperson
Evansville Metropolitan Planning Organization
Policy Committee

Appendix B:

Public Involvement

Notice of the proposed conformity determination for amendment 4 was released to the press and posted on the Evansville MPO website April 5, 2022. Comments on the proposed Conformity Determination were accepted from April 7, 2022 through April 21, 2022 at 4:00 PM.

Those interested in providing public comment were welcome to do so through

Email: comments@evansvillempo.com

Mail: Evansville Metropolitan Planning Organization

Room 316 - Civic Center Complex

1 NW M L King Jr. Blvd.

Evansville, IN 47708

Call in comments: (812) 436-7833

Fax Comments: (812) 436-7834

No public comments were received.

