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

**The Indiana Department  
of Transportation**

*Jackson County*  
**I-65 Added Travel Lane Project**

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## Acknowledgements

This *Transportation Conformity Report* for Jackson County was prepared by Indiana Department of Transportation (INDOT). Individuals from the following agencies contributed their efforts towards the completion of the Transportation Conformity Determination Report. They include:

- 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)

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## Executive Summary

As part of its transportation planning process, The Indiana Department of Transportation completed the transportation conformity process for the I-65 Added Travel Lane project in Jackson County. This report documents that the project meets 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ozone national ambient air quality standard (NAAQS) and attainment for the 2008 ozone NAAQS when the 1997 ozone NAAQS was revoked.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 Jackson County was *maintenance* 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 I-65 Added Travel Lane project in Jackson County.

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 and 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 December 29, 2005, the EPA, in 70 FR 69085, published the final rule for the Jackson County, Indiana area establishing a determination of attainment and a re-designation of Jackson County to attainment of the 8-hour ozone standard. Jackson County, Indiana 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).

## **2.0 I-65 Added Travel Lane Projects in Jackson County**

The I-65 Added Travel Lane project begins at US 50 in Jackson County and ends at SR 58 in Bartholomew County, and is 14.22 miles in length. The project will add one additional lane in each direction resulting in a six-lane cross-section, three in each direction. The project is currently under construction and is anticipated to be open to traffic by the close of the calendar year 2019 construction season.

### 3.0 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 EPA<sup>1</sup> for certain transportation activities, including non-exempt FHWA/FTA projects in isolated rural orphan areas. Once US DOT makes its 1997 ozone NAAQS conformity determination for the I-65 Added Travel Lane project, conformity will be required no less frequently than every four years. This conformity determination report will address transportation conformity for this project in Jackson County.

### 4.0 Transportation Conformity Requirements

#### 4.1 Overview

On November 29, 2018, EPA issued **Transportation Conformity Guidance for the South Coast II Court Decision**<sup>2</sup> (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 non-exempt FHWA/FTA projects in isolated rural orphan areas include: latest planning assumptions (93.110), latest emissions model (93.111), consultation (93.112), transportation control measures (93.113(d)), Currently conforming plan and TIP (93.114), CO, PM<sub>10</sub> and PM<sub>2.5</sub> hot spots (93.116), PM<sub>10</sub> and PM<sub>2.5</sub> control measure (93.117), and emissions budget and/or interim emissions (93.118 and/or 93.119).

For the 1997 ozone NAAQS areas, transportation conformity 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

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<sup>1</sup> 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](http://www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation) .

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

requirement to use the latest emissions model, or budget or interim emissions tests. Furthermore, the hot-spot analysis requirement (93.116) and PM control measures requirement (93.117) apply only for PM NAAQS.

Therefore, transportation conformity for the 1997 ozone NAAQS for the I-65 Added Travel Lane project in Jackson County 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 2.7 of EPA's guidance and addressed below, include:

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

## **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 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 Jackson County Orphan Maintenance Area, see also Section 4.4.

## **4.3 Consultation Requirements**

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

An Interagency Consultation Group (ICG), including FHWA, EPA, FTA, IDEM and INDOT, is reviewing the draft copy of this document concurrent with a 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.

Public consultation is being conducted consistent with planning rule requirements in 23 CFR 450. The document will be publicized in accordance with the INDOT's Public Involvement Process including posting on INDOT's website ([www.in.gov/indot/](http://www.in.gov/indot/)) from January 31 to February 15, 2019.

## **4.4 Timely Implementation of TCMs**

The Indiana SIP does not include any TCMs for the Jackson County Orphan Maintenance Area.

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## Conclusion

The conformity determination process completed for the I-65 Added Travel Lane project in Jackson County demonstrates that this project meets the Clean Air Act and Transportation Conformity rule requirements for the 1997 ozone NAAQS.