

# TRANSPORTATION CONFORMITY DOCUMENT

## FOR THE 2018-2045 DELAWARE-MUNCIE TRANSPORTATION PLAN AND THE FY 2018 – 2021 DELAWARE-MUNCIE TRANSPORTATION IMPROVEMENT PROGRAM



Prepared by:

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## Executive Summary

As part of its transportation planning process, the Delaware-Muncie Metropolitan Plan Commission completed the transportation conformity process for the 2018-2045 Delaware-Muncie Transportation Plan (TP) and the FY 2018-2021 Delaware-Muncie Transportation Improvement Program (TIP). This report documents that the 2018-2045 Delaware-Muncie TP and the FY 2018-2021 Delaware-Muncie 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ozone national ambient air quality standard (NAAQS) and attainment for the 2008 ozone NAAQS when the 1997 ozone NAAQS was revoked.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 Delaware County-Muncie, Indiana area was designated a maintenance area 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 TP and TIP for the Delaware County-Muncie, Indiana “orphan area”.

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.

## BACKGROUND

Transportation conformity is being established for the 2018-2045 Delaware-Muncie Transportation Plan (TP) and the FY 2018-2021 Delaware-Muncie Transportation Improvement Program (TIP) adopted by the MPO Transportation 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 Delaware County 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.

## CONFORMITY

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 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.

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.

On January 3, 2006, the EPA, in 70 FR 69443, published the final rule for the Delaware County-Muncie, Indiana area establishing a determination of attainment and a redesignation of Delaware County to attainment of the 8-hour ozone standard. Delaware County, Muncie, 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).

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). 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 for the Delaware-Muncie TP and 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)

### **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 Transportation Control Measures (TCM) are included in the Indiana SIP for the Muncie-Delaware County Orphan Maintenance Area.

Development of the Delaware-Muncie TP 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.

### **Consultation requirements, according to 40 CFR 93.112**

An Interagency Consultation Group (ICG) 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. A list of the ICG

members receiving this Transportation Conformity Determination Report is as follows:

Anthony Maietta	EPA	Alexandria Burns	FTA
Robert Dirks	FHWA	Joyce Newland	FHWA
Michelle Allen	FHWA	Larry King	MIT/PTC
Jay Mitchell	INDOT	Scott Bailey	INDOT
Shawn Seals	IDEM	Brian Callahan	IDEM
Robert Wertman	MCCOG	Jerry Bridges	MCCOG

The Report will also be distributed/publicized in accordance the Delaware-Muncie Metropolitan Plan Commission Public Participation Plan including posting on the [www.dmmmpc.org](http://www.dmmmpc.org) website with a comment period running from January 11 to January 25, 2019. The 2018-2045 Delaware-Muncie Transportation Plan (TP) and the FY 2018-2021 Delaware-Muncie Transportation Improvement Program (TIP) were developed in accordance with the Public Participation Plan as shown on pp. 59-61 in the TP and on pp. S10-S13 in the TIP.

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

No Transportation Control Measures (TCM) specific for Delaware County are included in the Indiana SIP for the Delaware County Orphan Maintenance Area.

**Fiscal constraint, according to 40 CFR 93.108**

The 2018-2045 TP includes a financial plan that demonstrates fiscal constraint and 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 transportation system over the period of the plan as set forth in Section VII, pp. 46-56.

The FY 2018-2021 TIP includes a summary of the fiscal constraint analysis for transit and local highway projects listed in the TIP document under Financial Considerations on pp. 24-26. The details for the federal funds available and programmed amounts are also located in the document in the Summary of Federal Funds Available and Programmed on p. 32. The local match required for federally funded projects is supplied from a variety of local sources including LRS, CBR, EDIT, MVH, 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**

This conformity determination document concludes that the 2018-2045 Delaware-Muncie Transportation Plan (TP) and the FY 2018-2021 Delaware-Muncie Transportation Improvement Program (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).