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

Eastgate Regional Council of Governments

2040 Metropolitan
Transportation Plan
Update

June 24, 2022

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Acknowledgements

This Transportation Conformity Report for the 2040 Metropolitan Transportation Plan Update was prepared by the Eastgate Regional Council of Governments. Individuals from the following agencies contributed their efforts towards the completion of the Transportation Conformity Determination Report. They include:

- Carmen Steman - FHWA Ohio Division
- Frank Burkett - FHWA Ohio Division
- Mark Kane - FTA Region 5
- Anthony Maietta - US EPA
- Paul Braun - Ohio EPA
- Jordan Whisler - ODOT
- Nino Brunello - ODOT
- Greg Giaimo - ODOT
- Nathaniel Brugler - ODOT
- Andrew Shepler - ODOT
- Anthony Hill ODOT

Executive Summary

As part of its transportation planning process, Eastgate completed the transportation conformity process for the 2040 MTP Update. This report documents that the 2040 MTP Update 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ozone national ambient air quality standard (NAAQS) and attainment for the 2008 ozone NAAQS when the 1997 ozone NAAQS was revoked.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 Eastgate region 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 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.

1.0 Background

1.1 Transportation Conformity Process

Eastgate is a US EPA 1997 Ozone Standard “Orphan” Area. Even though Eastgate’s 2040 MTP Update is currently a conforming plan, with an update cycle is every five years, a new conformity determination must occur every four years.

Pursuant to US EPA’s November 2018 Transportation Conformity Guidance for the South Coast II Court Decision, transportation conformity for the Eastgate’s existing 2040 MTP Update can be established based on a qualitative conformity determination; consistent with US EPA’s November 29, 2018 guidance (40 CFR 93.109(c)).

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.

The Eastgate Region is an attainment area for the 2008 Ozone standard and PM_{2.5} (1997 and 2006 standards). It was also a maintenance area for the 1997 ozone standards, with 2009 and 2018 (MOBILE based) budgets. Effective July 20th, 2013, the 1997 Ozone standard was revoked for conformity purposes. Accordingly, Eastgate’s MTP and TIP were no longer required to demonstrate transportation conformity.

However, the U.S. Court of Appeals for the D.C. Circuit recently issued a decision in *South Coast Air Quality Management District v. EPA*, No. 15-1115, which struck down portions of the 2008 Ozone NAAQS SIP Requirements Rule concerning the ozone National Ambient Air Quality Standards (NAAQS). These portions of the 2008 Ozone NAAQS SIP Requirements Rule addressed implementation requirements associated with the revocation of the 1997 ozone NAAQS. The impact of the decision addresses two groups of ozone areas described in the decision:

Areas that were maintenance areas for the 1997 ozone NAAQS at the time of revocation and are designated as attainment for the 2008 Ozone NAAQS. These areas have not been required to make transportation conformity determinations for any ozone NAAQS since the 1997 ozone NAAQS were revoked in April 2015 by EPA's Rule. Eastgate is an MPO in this category.

2.0 2040 Metropolitan Transportation Plan Update

The 2040 MTP Update documents the air quality procedures and requirements that were complied with and were essential in demonstrating conformity to the State Implementation Plan (SIP) for achieving and maintaining National Ambient Air Quality Standards (NAAQS). This documentation is intended to substantiate the air quality conformity assumptions and analyses performed by the Ohio Department of Transportation's Division of Modeling and Forecasting, and the Eastgate Regional Council of Governments (Eastgate). The air quality analyses have determined the conformity status for the agency's 2040 MTP Update.

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 EPA¹ for certain transportation activities, including updated or amended metropolitan MTPs and TIPs. Once US DOT makes its 1997 ozone NAAQS conformity determination for the 2040 MTP Update and TIP, conformity will be required no less frequently than every four years. This conformity determination report will address transportation conformity for the 2040 MTP Update and of the existing FY 2021-2024 Transportation Improvement Program (TIP), and for the new FY 2024-2027 TIP which will be approved on July 1, 2023.

¹ 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 .

4.0 Transportation Conformity Requirements

4.1 Overview

On November 29, 2018, EPA issued **Transportation Conformity Guidance for the South Coast II Court Decision**² (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 Eastgates 2040 MTP Update, 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)

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

5.0 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.

51 Consultation Requirements

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

Interagency consultation was conducted with Frank Burkett FHWA, Carmen Stemen FHWA, Mark Kane FTA, Jordan Whisler ODOT, Nino Brunello ODOT, Greg Giaimo ODOT, Nathaniel Brugler ODOT, Andrew Shepler ODOT, Anthony Hill ODOT. ODOT will be initiating air quality interagency consultation (IAC) with US EPA, US DOT, and OEPA via email or call if desired, to confirm that the Eastgate Region area will be advancing a **qualitative conformity determination**. Interagency consultation was conducted consistent with the Ohio Conformity SIP in accordance **with the conformity regulation's requirements at 40 CFR 93.105]**.

Public consultation was conducted consistent with planning rule requirements in 23 CFR 450.

52 Timely Implementation of TCMs

The Ohio SIP does not include any TCMs.

53 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 2040 MTP update is fiscally constrained, as demonstrated in the funding section of the plan.

Conclusion

The conformity determination process completed for the 2040 MTP Update demonstrates that these planning documents meet the Clean Air Act and Transportation Conformity rule requirements for the 1997 ozone NAAQS.

APPENDIX

Public Involvement

PUBLIC INVOLVEMENT

Eastgate supports early and ongoing public involvement in developing the Metropolitan Transportation Plan, the Transportation Improvement Program and all other program activities. Public involvement is a vital component in transportation planning. Public participation provides citizens a way to voice ideas and needs, access to the decision-making process, and information on the transportation planning process.

Eastgate maintains a Public Participation Process (PPP) to engage the public in developing and updating transportation planning efforts. The PPP provides a variety of means for early and continuing public involvement.

The public outreach methods utilized for Eastgate's 2040 Metropolitan Transportation Plan Update Transportation Conformity was consistent with Eastgate's PPP through the following staff activities:

- A June 24th, 2022, press release was issued to advertise the availability of the draft report.
- Eastgate staff presented the Transportation Conformity Report to the agency's Technical Advisory Board (TAC).
- Eastgate staff presented the Transportation Conformity Report to the agency's Citizen's Advisory Board (CAB) meeting.
- The Transportation Conformity Report was made available on agency social media outlets such as Facebook, Twitter, and Eastgate's website.

PUBLIC NOTICE

Today's Date: June 24, 2022
Contact: Ken Sympson, Director of Transportation
Eastgate Regional Council of Governments
234-254-1502, ksympson@eastgatecog.org

PUBLIC COMMENT SOUGHT FOR AIR QUALITY TRANSPORTATION CONFORMITY OF THE 2040 METROPOLITAN TRANSPORTATION PLAN UPDATE

Metropolitan Transportation Plan Outlines Transportation Priorities & Projects

Eastgate is a US EPA 1997 Ozone Standard "Orphan" Area. Therefore, Eastgate's current 2040 MTP Update will need to have a new conformity determination.

Even though Eastgate's current 2040 MTP Update is currently a conforming plan, with an update cycle every five years, a new conformity determination must occur every four years.

The *2040 Metropolitan Transportation Plan Update* includes a list of 353 projects, resulting in over \$632.1 million in infrastructure investment. Projects include roadway resurfacing, bridge replacement, intersection enhancements, technology upgrades, bicycle and pedestrian improvements, and others. No new capacity adding projects have been added to the 2040 MTP Update since it was approved on July 30, 2018.

The public is encouraged to comment on the draft Transportation Conformity Report until close of business on Friday, July 15, 2022. Comments can be submitted by email to Ken Sympson, Director of Transportation, phone (234) 254-1502, or in-person during normal business hours at Eastgate's office (10th Floor, 100 East Federal Street, Youngstown). More information is available on Eastgate's website:

The document is available here ([link](#)).

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**RESOLUTION
OF THE EASTGATE REGIONAL COUNCIL OF GOVERNMENTS APPROVING THE AIR QUALITY
CONFORMITY DETERMINATION FOR THE 2040 METROPOLITAN TRANSPORTATION PLAN
UPDATE**

WHEREAS, the Eastgate Regional Council of Governments (Eastgate) is officially designated as the Metropolitan Planning Organization (MPO) by the Governor acting through the Ohio Department of Transportation, and in cooperation with locally elected officials for Mahoning and Trumbull Counties; and

WHEREAS, Eastgate, is the designated MPO for transportation planning in the Youngstown Metropolitan Area which include in its' study area Mahoning and Trumbull Counties; and

WHEREAS, Eastgate, is a Transportation Management Area (TMA) formally identified and established in ISTEA, included in TEA-21, retained in SAFETEA-LU, and MAP - 21, Fast Act and continued under the new transportation legislation – Infrastructure Investment and Jobs Act (IIJA); and

WHEREAS, Eastgate, pursuant to the Ohio Office of Management and Budget Intergovernmental Review Process, is designated as the Intergovernmental Review Agency for Mahoning and Trumbull Counties; and

WHEREAS, the MPO has, pursuant to 23 United States Code 134, and 49 United States Code 1602(a), 1603(a), and 1604 (g)(1), completed the 2040 MTP Update and met the triennial approval date of July 30, 2018; and

WHEREAS, the MPO has, pursuant to 23 United States Code 134, and 49 United States Code 1602(a)(z), 1603(a), and 1604(g)(1) and (1), prepared a Transportation Improvement Program for Fiscal Years 2021 - 2024 for Mahoning and Trumbull county area; and

WHEREAS, on June 12, 2007, the Federal Register/Vol. 72, No. 112 / Rules and Regulations (page 32193) publication stated that the Youngstown Warren-Sharon PA-OH Counties of Columbiana, Mahoning, and Trumbull, were in “Attainment” of the 8-Hour Ozone Standard; and

WHEREAS, on November 13, 2009, the Federal Register/Vol. 74, No. 218 / Rules and Regulations (page 58697) publication stated that the Youngstown Ohio area was attaining the 24-Hour PM2.5 National Ambient Air Quality Standards; and

WHEREAS, the Eastgate region is a 1997 ozone standard maintenance area with 2009 and 2018 (MOBILE based) budgets, and, the region is also a 2008 ozone standard and PM2.5 (1997 and 2006 standards) attainment area; and

WHEREAS, effective July 20, 2013 the 1997 ozone standard was revoked for conformity purposes and accordingly Eastgate’s Metropolitan Transportation Plan (MTP) and Transportation Improvement Program (TIP) no longer need to demonstrate transportation conformity but is still required to update its MTP on a five-year schedule – with a minor MTP update scheduled for May 2018; and

GPB RESOLUTION #011-2022- continued

WHEREAS, the U.S. Court of Appeals for the D.C. Circuit recently issued a decision in *South Coast Air Quality Management District v. EPA*, No. 15-1115, which struck down portions of the *2008 Ozone NAAQS SIP Requirements Rule* concerning the ozone National Ambient Air Quality Standards (NAAQS). These portions of the *2008 Ozone NAAQS SIP Requirements Rule* addressed implementation requirements associated with the revocation of the 1997 ozone NAAQS; and

WHEREAS, Eastgate is a US EPA 1997 Ozone Standard “Orphan” Area. Therefore, Eastgate’s current 2040 MTP Update will need to have a new conformity determination.

WHEREAS, Even though Eastgate’s current 2040 MTP Update is currently a conforming plan, with an update cycle every five years, a new conformity determination must occur every four years.

WHEREAS, Eastgate’s 2040 MTP Update air quality conformity process was addressed through coordination with the U.S.EPA, Ohio E.P.A., Ohio-FHWA, ODOT Central Office Division of Modeling/Forecasting and the Division of Statewide Planning/Research, and Eastgate; and

WHEREAS, on June 17, 2022, an air quality interagency e-mail was sent between the above-named agencies, outlining Eastgate's 2040 MTP Update adoption and a new conformity finding. The purpose of the e-mail was to have concurrence from the group about Eastgate’s air quality conformity process regarding the latest planning assumptions, emission modeling, conformity analyses years, plan schedule, public review, and final plan approval timelines; and

WHEREAS, the air quality analyses have determined the conformity status for the agency’s 2040 MTP Update, the determination of the conformity of the existing FY 2021-2024 Transportation Improvement Program (TIP).

NOW, THEREFORE, BE IT RESOLVED:
That it approves the AIR Quality Conformity Determination for the 2040 Metropolitan Transportation Plan Update.

Passed this _____ day of _____, 2022.

ATTEST:

James G. Kinnick, P.E., Executive Director

JP Darko, Chair