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Transportation Conformity Determination Statement (1997 Poughkeepsie Ozone Non-attainment Area)

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About the DCTC, NYMTC, & OCTC

The Dutchess County Transportation Council (DCTC), Orange County Transportation Council (OCTC), and New York Metropolitan Transportation Council (NYMTC), serve as the designated Metropolitan Planning Organizations (MPOs) for Dutchess, Orange, and Putnam Counties. In accordance with the provisions set forth in the current federal transportation law – the Fixing America’s Surface Transportation (FAST) Act – and 23 U.S.C. 134 and 49 U.S.C. 5303, the DCTC, OCTC, and NYMTC are tasked with carrying out a cooperative and comprehensive multimodal transportation planning process in Dutchess County. Federal transportation law requires that a U.S. Census-designated Urbanized Area be represented by an MPO, which is responsible for ensuring that federal highway and transit dollars are committed through a locally driven, comprehensive planning process.

Purpose

This Transportation Conformity Determination Statement for the FFY 2020-2024 Transportation Improvement Program (TIP) was prepared jointly by the DCTC, OCTC, and NYMTC, with the following agencies also contributing towards its completion:

- Federal Highway Administration (FHWA)
- Federal Transit Administration (FTA)
- Environmental Protection Agency (EPA)
- NYS Department of Environmental Conservation (NYSDEC)
- NYSDOT-Environmental Science Bureau
- NYSDOT-Region 8 (Hudson Valley)

Executive Summary

As part of their transportation planning processes, the DCTC, OCTC, and NYMTC completed a modified transportation conformity process for their FFY 2020-2024 TIPs. This report documents that their FFY 2020-2024 TIPs 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 National Ambient Air Quality Standards (NAAQS) or any interim milestones. 42 U.S.C. 7506(c)(1), the EPA’s transportation conformity rule, establishes the criteria and procedures for determining whether Metropolitan Transportation Plans (MTPs), TIPs, and federally supported highway and transit projects conform to the SIP and 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 NAAQS and attainment for the 2008 ozone NAAQS when the 1997 ozone NAAQS was revoked. These conformity determinations are required in these areas after

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February 16, 2019. The Poughkeepsie Ozone Nonattainment Area was in an attainment status 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.

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.

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.

Poughkeepsie Ozone Nonattainment Area

Effective June 15, 2004, the EPA designated Dutchess, Orange, and Putnam County to be a nonattainment area under the 8-hour ozone standard. Based on 2001-2003 data, the 8-hour ozone design value for the Poughkeepsie Ozone Nonattainment Area was 0.094 ppm. Dutchess, Orange and Putnam County were therefore classified as a Moderate Ozone Nonattainment Area under the 8-hour ozone standard.ⁱ

On May 21, 2012, the EPA issued its air quality designations for the 2008 ozone NAAQS. With an effective date of July 20, 2012, the EPA designated the Poughkeepsie Area (i.e. Dutchess, Orange, and Putnam County) as being in attainment for the 2008 ozone NAAQS of 0.075 ppm.ⁱⁱ

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On June 4, 2018, the EPA issued its air quality designations for the 2015 ozone NAAQS of 0.070 ppm. Effective August 3, 2018, the EPA designated the Poughkeepsie Area (i.e. Dutchess, Orange, Putnam, and Ulster County) as being in attainment for the stricter 2015 ozone standard.ⁱⁱⁱ

Air quality data from the most recent three years indicates that the Poughkeepsie area has maintained a 3-year ozone design value of 0.069 ppm for the 4th highest 8-hour average, which continues to meet the 2015 NAAQS.^{iv}

Metropolitan Transportation Plans (MTPs)

The MTP serves as the strategic, long-range multimodal transportation plan for a Metropolitan Planning Area. Spanning no less than a 20-year horizon, the MTP must address the ten planning factors in the FAST Act and be fiscally constrained. In attainment areas, the MTP is updated every five years, while in nonattainment areas it is updated every four years. Below is a summary of the three MTP's that cover the Poughkeepsie 1997 Ozone Nonattainment Area.

Dutchess County Transportation Council MTP

The DCTC's current MTP, *Moving Dutchess 2*, was adopted on March 24, 2016 and has a planning horizon year of 2040. The MTP includes over 170 recommendations to preserve and improve the transportation system over the next 20 years. The DCTC developed the MTP's recommendations through a review of existing guidance, input from state and local agencies, analysis of demographic and transportation data,

and feedback from the public. The DCTC chose to identify specific projects to increase the value of the MTP to public agencies and communities, providing them greater detail on where to target investments. Recommendations are divided into short-range, mid-range, and long-range time periods, which relate to a project's priority and complexity, as well as funding availability. Since the DCTC determined that insufficient funding was expected to reach a true state of good repair, its MTP outlines a preservation-based approach to address transportation safety and mobility. The MTP recommendations support the projects pursued in the TIP and planning studies supported in the annual Unified Planning Work Program (UPWP).

Orange County Transportation Council MTP

The OCTC's current MTP was first adopted on November 17, 2015 and subsequently revised on June 12, 2017. The OCTC MTP also uses a planning horizon year of 2040. The MTP inventories transportation systems in the county, describes travel patterns, discusses transportation issues, outlines agency planning and funding outlooks. It also describes the OCTC's goals, objectives and recommendations to preserve and improve the transportation system. These also support the projects pursued in the TIP and the planning studies supported in the UPWP. Recommendations are divided between the near-term TIP period and the post TIP period, and address both motorized and non-motorized transportation needs.

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New York Metropolitan Transportation Council MTP

NYMTC's current MTP, *Plan 2045*, was adopted on June 29, 2017 and has a planning horizon year of 2045. The MTP uses a theme of "Maintaining the Vision for a Sustainable Region," and builds on the preceding MTP – *Plan 2040*. The MTP covers all major modes of transportation from a regional perspective, including roadways, public transportation, bicycles and pedestrian facilities, goods movement and special needs transportation. In addition, key transportation topics are addressed, such as transportation system management and operations, safety and security, resiliency, freight transportation, specialized transportation and congestion management. The MTP recommends a variety of major transportation projects, both highway and transit, that have projected total costs of over \$100 million. The recommendations are generally tied to five-year TIP periods through 2045. As with the DCTC and OCTC, NYMTC's MTP supports the projects pursued in its TIP and the planning studies supported in its UPWP.

Transportation Improvement Programs (TIPs)

The three TIPs of the DCTC, OCTC, and NYMTC serve as the prioritized listings of federally funded transportation projects in Dutchess, Orange, and Putnam County, and they are developed and adopted by each MPO as part of their metropolitan transportation planning process. The TIPs identify capital and non-capital surface transportation projects or project phases that are proposed for funding under 23 U.S.C. and 49 U.S.C. Chapter 53. At a minimum, each TIP must

be updated at least once every four years and approved by the MPO and Governor. In New York, the TIP update cycle coincides with the update cycle for the Statewide Transportation Improvement Program (STIP), which is typically done every three years.

The FAST Act requires that MPOs develop their TIPs in cooperation with the State and all affected public transportation operators. The TIPs must contain projects that are consistent with current MTPs and reflect the investment priorities established by each MPO. Each TIP must also include, to the maximum extent practicable, a description of the anticipated effect of the TIP on achieving the performance targets established in the MTPs, linking investment priorities to those performance targets.

Transportation Conformity Determination

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 for certain transportation activities, including updated or amended metropolitan MTPs and TIPs. Once USDOT makes its 1997 ozone NAAQS conformity determination for the DCTC, OCTC, and NYMTC TIPs, conformity will be required no less frequently than every four years. This conformity determination addresses transportation conformity for the 1997 Ozone Nonattainment standard for the FFY 2020-2024 TIPs of the DCTC, OCTC, and NYMTC.

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Overview

On November 29, 2018, 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 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, budget, or interim emissions tests.

Therefore, transportation conformity for the 1997 ozone NAAQS for the FFY 2020-2024 TIP can be demonstrated by showing the remaining requirements in Table 1 in 40 CFR 93.109 have been met. These include the following requirements that are addressed in Section 2.4 of EPA's guidance:

1. Latest planning assumptions (93.110)
2. Consultation (93.112)
3. Transportation Control Measures (93.113)
4. Fiscal constraint (93.108)

1. 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.

As per previous ICG guidance, and as documented in previous conformity determination statements for the Poughkeepsie Ozone Nonattainment Area, no TCMs are identified for Dutchess, Orange, or Putnam County as part of the applicable State Implementation Plan (SIP). Therefore, the TCM implementation conformity criterion does not apply to these MPOs. In addition, no recommendations in the MTPs or TIPs of the DCTC, NYMTC, and OCTC will interfere with the timely implementation of TCMs in other areas.

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2. Consultation Requirements

The consultation requirements in 40 CFR 93.112 were addressed both for interagency consultation and public consultation. As per Regulations (6 NYCRR) Part 240, interagency consultation was conducted with the NYSDEC, NYSDOT, FHWA, FTA and USEPA. Representatives of these agencies comprise the Interagency Consultation Group (ICG) for air quality conformity in New York State.

The statewide process for addressing the South Coast II decision began with a conference call December 20, 2018 that included federal, state, and MPO representatives. Interagency consultation was conducted consistent with the New York State Transportation Conformity SIP, as codified in Chapter 6 of the New York Codes Rules.

To assess the possible air quality impacts of the projects programmed in the three TIPs, the DCTC, OCTC, and NYMTC identified those projects that could be classified as ‘non-exempt’ (i.e. may have adverse emissions impacts). These are typically road projects that change capacity by at least one travel lane, or transit projects that change capacity on a fixed route system. These types of projects require close monitoring to ensure that they do not worsen regional air quality.

Although most of the projects on the three TIPs are ‘exempt,’ the DCTC, OCTC and Putnam County portion of the NYMTC TIP include the following ‘non-exempt’ projects:

1. PIN 806242: I-84 ITS improvements from Route 17 to I-87 – NYSDOT (OCTC TIP).
2. PIN 806243: I-84 ITS improvements from I-87 to Route 9 – NYSDOT (OCTC TIP).
3. PIN 875924: Newburgh Area Bus Service Expansion – Orange County (OCTC TIP).
4. PIN 876142: Kiryas Joel Park & Ride Lot Expansion – Village of Kiryas Joel (OCTC TIP).
5. PIN 882347: Orange County Park & Ride Lot Expansions – NYSDOT (OCTC TIP).

This conformity document was provided in draft form to the ICG on May 22, 2019, undergoing interagency review concurrent with the public comment period.

Public consultation was conducted consistent with planning rule requirements in 23 CFR 450. As per their bylaws/procedures, the DCTC, OCTC, and NYMTC held public comment periods for this transportation conformity statement, concurrent with their TIP public comment periods. The public was provided an opportunity to review and comment on the draft conformity determination and supporting documentation during each MPO comment period.

The DCTC held its comment period from May 24, 2019-June 24, 2019, the OCTC from June 24, 2019-July 23, 2019, and NYMTC from June 24, 2019-July 23, 2019. All comments received and responses to those comments will be included in the final conformity documentation.

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6. Timely Implementation of TCMs

There are no TCMs in the SIP for the Poughkeepsie, NY 1997 ozone nonattainment area.

7. Fiscal Constraint

Transportation conformity requirements in 40 CFR 93.108 state that TIPs must be fiscally constrained consistent with USDOT's metropolitan planning regulations at 23 CFR part 450. The three FFY 2020-2024 TIPs are fiscally constrained, as demonstrated in their respective TIP narratives.

Conclusion

The conformity determination process completed for the current MTPs and FFY 2020-2024 TIPs of the DCTC, OCTC, and NYMTC demonstrates that they meet the Clean Air Act and Transportation Conformity rule requirements for the 1997 ozone NAAQS. The signed resolutions adopting this conformity determination will be included in the final documentation.

ⁱ "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase 1," 69 Federal Register 84 (30 April 2004), pp. 23951-24000.

ⁱⁱ "Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards," 77 Federal Register 98 (21 May 2012), p. 301137.

ⁱⁱⁱ "Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards," 83 Federal Register 107 (4 June 2018), p. 25821.

^{iv} NYSDEC. (2019). *High Ozone Values During 2018*, Retrieved from <http://www.dec.ny.gov/chemical/38377.html>