



Memorandum

Subject: **UPDATED:** Interim Guidance on Conformity
Requirements for the 1997 Ozone NAAQS

Date: October 1, 2018

From: Gloria M. Shepherd *Gloria M. Shepherd*
FHWA Associate Administrator for
Planning, Environment and Realty (HEP-1)

In Reply Refer To:
HEPN-10
TPE-1

Elizabeth S. Riklin *Elizabeth S. Riklin*
FTA Acting Associate Administrator for
Planning and Environment (TPE-1)

To: FHWA Division Administrators
FTA Regional Administrators

This guidance provides important updated information regarding transportation conformity requirements for pending planning and project development actions in programs administered by the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). This updated guidance replaces the “Interim Guidance on Conformity Requirements for the 1997 Ozone NAAQS” issued by FHWA and FTA on April 23, 2018. On February 16, 2018, the U.S. Court of Appeals for the D.C. Circuit 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). Those portions of the 2008 Ozone NAAQS SIP Requirements Rule included transportation conformity requirements associated with EPA’s revocation of the 1997 ozone NAAQS. The decision addresses transportation conformity determinations for two groups of ozone areas (the “orphan” areas):

1. 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areas have not been required to make transportation conformity determinations for the 1997 ozone NAAQS since that NAAQS was revoked in April 2015 by EPA's Rule.
2. Areas that were designated as nonattainment 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areas have not been required to make transportation conformity determinations for the 1997 ozone NAAQS since that NAAQS was revoked in April 2015 by EPA's Rule.

Based on the information in EPA's Greenbook¹, we have identified 82 such areas encompassing as many as 228 counties in 24 States that are affected by the Court's decision². Please refer to 40 CFR Part 81 and/or EPA's Greenbook for a full description and maps of these 1997 ozone NAAQS areas. Some of these areas have already made conformity determinations for the 1997 ozone NAAQS, in light of the Court's decision.

After the Court issued its ruling in February 2018, EPA filed a petition for rehearing on various issues, both as to the merits of the Court's ruling and the remedy imposed by the Court. On September 14, 2018, the Court denied EPA's request for rehearing on the merits, but stayed its vacatur of the transportation conformity aspects of its ruling until February 16, 2019. In essence, the Court provided EPA with one year from the date of its original decision to implement its ruling, and that year expires on February 16, 2019.

While DOT is waiting for guidance from EPA clarifying the transportation conformity requirements that will apply for the "orphan" areas beginning on February 16, 2019, all planning and project development actions (including NEPA approvals) in "orphan" areas taken prior to this date may proceed and are not subject to conformity requirements for the 1997 ozone NAAQS. Projects that have already completed NEPA may continue to proceed.

The FHWA and FTA strongly encourage all impacted areas to make every effort to complete their 1997 ozone conformity determinations as soon as possible to prevent any delays of transportation plans, programs, and non-exempt projects. Conformity determinations for the 1997 ozone NAAQS will be required on plan, TIP and project actions after February 15, 2019, and agencies need to plan ahead to make sure they are prepared to make these determinations.

If you have questions or if State DOTs, MPOs and grantees need technical assistance, please contact at FHWA Cecilia Ho (202-366-9862), Karen Perritt (202-366-9066) or David Kall (202-366-6276), and at FTA Dwayne Weeks (202- 493-0316) or Megan Blum (202-366-0463).

Thank you for your immediate attention to this guidance.

¹ <https://www.epa.gov/green-book/green-book-8-hour-ozone-1997-area-information-naaqs-revoked>

² The 82 areas are set forth in the tables below

**1997 Ozone Areas Not Covered in Full by the 2008 Ozone Standard,
by State (24) and 1997 Ozone Area Name (82)**

State	1997 Ozone NAAQS Area Name
AL	Birmingham, AL
CA	Amador and Calaveras Cos. (Central Mountain Cos.), CA
CA	Mariposa and Tuolumne Cos (Southern Mtn), CA
CA	Sutter Co (Sutter Buttes), CA
DE	Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE
GA	Atlanta, GA
GA	Macon, GA
GA	Murray Co (Chattahoochee Nat Forest), GA
IL	St. Louis, MO-IL
IN	Evansville, IN
IN	Fort Wayne, IN
IN	Greene Co, IN
IN	Indianapolis, IN
IN	Jackson Co, IN
IN	La Porte Co., IN
IN	Louisville, KY-IN
IN	Muncie, IN
IN	South Bend-Elkhart, IN
IN	Terre Haute, IN
KY	Cincinnati-Hamilton, OH-KY-IN
KY	Clarksville-Hopkinsville, TN-KY
KY	Huntington-Ashland, WV-KY
KY	Louisville, KY-IN
MA	Boston-Lawrence-Worcester (E. Mass), MA
MA	Springfield (W. Mass), MA
MD	Kent and Queen Anne's Cos,
ME	Hancock, Knox, Lincoln and Waldo Cos, ME
ME	Portland, ME
MI	Allegan Co, MI
MI	Benton Harbor, MI
MI	Benzie Co, MI
MI	Cass Co, MI
MI	Detroit-Ann Arbor, MI
MI	Flint, MI

MI	Grand Rapids, MI
MI	Huron Co, MI
MI	Kalamazoo-Battle Creek, MI
MI	Lansing-East Lansing, MI
MI	Mason Co, MI
MI	Muskegon, MI
NC	Charlotte-Gastonia-Rock Hill, NC-SC
NC	Haywood and Swain Cos (Great Smoky NP), NC
NC	Raleigh-Durham-Chapel Hill, NC
NC	Rocky Mount, NC
NH	Boston-Manchester-Portsmouth (SE), NH
NV	Las Vegas, NV
NY	Albany-Schenectady-Troy, NY
NY	Buffalo-Niagara Falls, NY
NY	Essex Co (Whiteface Mtn), NY
NY	Jefferson Co, NY
NY	Poughkeepsie, NY
NY	Rochester, NY
OH	Canton-Massillon, OH
OH	Dayton-Springfield, OH
OH	Lima, OH
OH	Parkersburg-Marietta, WV-OH
OH	Steubenville-Weirton, OH-WV
OH	Toledo, OH
OH	Wheeling, WV-OH
OH	Youngstown-Warren-Sharon, OH-PA
PA	Altoona, PA
PA	Clearfield and Indiana Cos, PA
PA	Erie, PA
PA	Franklin Co, PA
PA	Greene Co, PA
PA	Harrisburg-Lebanon-Carlisle, PA
PA	Johnstown, PA
PA	Scranton-Wilkes-Barre, PA
PA	State College, PA
PA	Tioga Co, PA
PA	York, PA
PA	Youngstown-Warren-Sharon, OH-PA
RI	Providence (all of RI), RI
SC	Charlotte-Gastonia-Rock Hill, NC-SC
TN	Clarksville-Hopkinsville, TN-KY
TN	Knoxville, TN
TX	Beaumont-Port Arthur, TX
VA	Fredericksburg, VA
VA	Madison and Page Cos (Shenandoah NP), VA
VA	Norfolk-Virginia Beach-Newport News (Hampton Roads), VA
VA	Richmond-Petersburg, VA

WI	Door Co, WI
WI	Kewaunee Co, WI
WI	Manitowoc Co, WI
WI	Milwaukee-Racine, WI
WV	Charleston, WV
WV	Huntington-Ashland, WV-KY
WV	Parkersburg-Marietta, WV-OH
WV	Steubenville-Weirton, OH-WV
WV	Wheeling, WV-OH

To: Paul Agnello
Subject: 2018 Fall Transportation Meeting

Dear Regional Planning Partner:

The Commonwealth Transportation Board (CTB) will conduct nine public meetings across the state beginning in October 2018 to give stakeholders the opportunity to review and provide comments on transportation projects and priorities. Specifically, information will be provided on projects and strategies submitted for consideration through the SMART SCALE prioritization process.

I will co-host this meeting in the Fredericksburg District with our local CTB representative Henry “Hap” Connors, Jr., and Secretary of Transportation, Shannon Valentine, on Wednesday, November 28, 2018. The meeting will be held at the Virginia Department of Transportation Fredericksburg District Auditorium at 86 Deacon Road, Fredericksburg, VA 22405. If you are not able to attend this session, I have enclosed a complete schedule of all nine meetings being held statewide.

This year’s meetings will consist of an Open House format beginning at 4 p.m. where attendees can review and provide feedback on the projects and strategies submitted for consideration for both the High-Priority Projects Program and the Construction District Grant Program during the SMART SCALE application phase.

Following the Open House, an opportunity to engage with the Secretary will be provided in a town hall style format for the public and transportation stakeholders. These meetings are intended to be interactive; there will be no formal public comment.

Starting on Monday, October 15, meeting materials will be available online:
<http://www.ctb.virginia.gov/planning/fallmeetings/>

Representatives from the Virginia Department of Transportation, the Virginia Department of Rail and Public Transportation, and the Office of Intermodal Planning and Investment will be available to provide information on current initiatives and to answer any questions.

I encourage you to come and speak with our transportation agency representatives. If you cannot attend the meetings, you may send your comments to Infrastructure Investment Director at 1401 E. Broad Street, Richmond, VA 23219 or e-mail them to Six-YearProgram@vdot.virginia.gov by December 13, 2018.

Comments on rail and public transportation projects may be sent to DRPT Public Information Officer at 600 East Main Street, Suite 2102, Richmond, VA 23219 or e-mail them to drptpr@drpt.virginia.gov.

I truly appreciate your participation at this session. If you have any questions prior to the meeting, please contact Michelle Shropshire at (540) 899-4278.

Sincerely,

Marcie Parker, P.E.
VDOT Fredericksburg District Engineer