



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have not been required to make transportation conformity determinations for the 1997 ozone NAAQS since that NAAQS was revoked in April 2015 by EPA's Rule.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have not been required to make transportation conformity determinations for the 1997 ozone NAAQS since that NAAQS was revoked in April 2015 by EPA's Rule.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



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Tim McLaughlin
FAMPO Chairman

Paul Agnello
FAMPO Administrator

September 17, 2018

To: GWRC Region State Delegation

Re: Preserving the right to widen I-95 in Stafford County between Exit 143 and Exit 133

With a daily average of up to 150,000 vehicles, Interstate 95 in Stafford County was identified in the 2017 INRIX Traffic Study as having the worst congestion of any road in the nation.

Four to six years from now the planned 95 Express Lanes extension from Exit 143 to Exit 133 and the Rappahannock River Crossing projects will provide some much-needed additional capacity to help relieve that congestion, and the Region appreciates the Commonwealth's efforts to improve I-95 traffic mobility and safety.

We are concerned, however, with the ability of the planned improvements to handle peak weekend traffic in the future. Existing peak weekend traffic often rivals peak weekday traffic; some of the Region's worst congestion occurs on Friday, Saturday and Sunday.

The planned 95 Express Lanes extension will provide two additional reversible lanes, enabling the Commonwealth to provide five lanes for the peak direction and three lanes in the opposing direction. This lane configuration works well for peak weekday commuter traffic where the heavy traffic is one direction in the AM and in the opposite direction in the PM.

The problem in our Region with peak weekend traffic, however, is that the traffic can be at peak level in both directions at the same time. In this situation, a fourth general purpose lane is needed for both sides of I-95.

Widening I-95 from six to eight lanes between Exit 143 and Exit 133 would be an extremely cost-effective improvement. Most of this section has an existing hard shoulder on the median side of the road. This hard shoulder exists because it used to be a full-depth general purpose travel lane before the interstate was widened from four to six lanes in the mid-1980's. Converting a hard shoulder to a general-purpose lane is considerably less costly than building a brand-new lane. As a result, we strongly feel that the option of widening I-95 from six to eight lanes between Exit 143 (Route 610) and Exit 133 (U.S. 17) in Stafford County should be preserved for the future.

In conclusion, we are concerned to hear that there is a possibility that the right of the Commonwealth to widen I-95 from six to eight lanes in Stafford County may be significantly restricted by the planned agreement for the extension of the 95 Express Lanes to Exit 133. Our understanding is the restriction

could require that the Commonwealth provide competition compensation to the operator of the 95 Express Lanes if additional general-purpose lanes are provided in the future. This compensation could significantly increase the cost of widening I-95 in Stafford County and could reduce the ability of the Region and Commonwealth to work together to provide cost-effective solutions to improve traffic mobility and safety. We would appreciate your assistance on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. McLaughlin', with a long horizontal flourish extending to the right.

Tim McLaughlin
Chairman

Cc: FAMPO Policy Committee

SENATE OF VIRGINIA



RICHARD H. STUART

28TH SENATORIAL DISTRICT
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RULES

September 24, 2018

Mr. Tim McLaughlin
Chairman, FAMPO
406 Princess Anne Street
Fredericksburg, Virginia 22401

Dear Tim,

Thank you for your letter regarding the widening of I-95 in Stafford County between Exit 143 and Exit 133. As you pointed out in your letter, the INRIX Traffic Study has named that stretch of I-95 as the worst traffic congestion of any road in the nation. I believe this is a quality of life issue, and if necessary improvements are not made, our local economy is going to suffer the consequences.

For several years, I have worked on trying to use shoulders as travel lanes during peak hours within the Stafford County portion of I-95. However, now with your support, I think we may be successful in getting something through for the 2019 legislative session.

Over the next few weeks, I have meetings scheduled with various officials from the Virginia Department of Transportation to discuss the competition compensation issue specifically. I will keep you informed with my progress on this matter.

If you wish to discuss this matter in further detail, please do not hesitate to call me at (804) 493-8892.

Sincerely,

A handwritten signature in black ink, appearing to be "R. Stuart", written over a circular scribble.

Richard H. Stuart
Senate of Virginia
District 28