



# Memorandum

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

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In Reply Refer To:  
HEPN-10  
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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areas have not been required to make transportation conformity determinations for the 1997 ozone NAAQS since that NAAQS was revoked in April 2015 by EPA's Rule.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areas have not been required to make transportation conformity determinations for the 1997 ozone NAAQS since that NAAQS was revoked in April 2015 by EPA's Rule.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 Greenbook<sup>1</sup>, we have identified 82 such areas encompassing as many as 228 counties in 24 States that are affected by the Court's decision<sup>2</sup>. 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.

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

<sup>2</sup> 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)**

<b>State</b>	<b>1997 Ozone NAAQS Area Name</b>
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