




U.S. Department
of Transportation
**Federal Highway
Administration**

**Federal Transit
Administration**

Memorandum

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

Date: April 23, 2018

From: Walter C. Waidelich, Jr. 
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In Reply Refer To:
HCC-30
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To: FHWA Division Administrators and
FTA Regional Administrators

This guidance provides important information regarding transportation conformity requirements for certain pending planning and project development actions in programs administered by the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). 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 for the 2008 ozone NAAQS as well as the anti-backsliding 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.

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 any ozone NAAQS since the 1997 ozone NAAQS were revoked in April 2015 by EPA's Rule.

Based on the information in EPA's Greenbook,¹ we have identified 82 such areas encompassing as many as 228 counties in 24 States that are potentially affected by the

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

Court's decision.² Please refer to 40 CFR Part 81 and/or EPA's Greenbook for a full description and maps of these 1997 ozone areas.

While we are waiting for guidance from EPA clarifying the possible impacts, *all routine planning and project development actions may proceed throughout the country, except for the following actions within the identified areas that should be considered "on-hold" for now:*

- New Metropolitan Long Range Plan and Transportation Improvement Programs (TIP), *updates* and *amendments* that include the addition of a project that is *not exempt* from transportation conformity may not proceed until transportation conformity with the 1997 ozone NAAQS is determined. Exempt projects are listed in 40 CFR 93.126 and 93.127. *Administrative modifications* to Metropolitan Plans and TIPs may proceed because, by definition in 23 CFR 450.104, those actions do not require a conformity determination.
- Statewide Transportation Improvement Program (STIP) approvals and amendments that include TIPs or non-exempt projects from the 82 identified areas may not proceed, unless the TIP or project is determined to conform with the 1997 ozone NAAQS or is limited to projects that are exempt from transportation conformity. Exempt projects are listed in 40 CFR 93.126 and 93.127. Partial STIP approvals, i.e., those limited to other areas of the state may proceed as described in 23 CFR 450.220(b)(1)(iii).
- Within the 82 identified areas, NEPA approvals for FHWA/FTA projects (40 CFR 93.101) may not proceed unless the existing Metropolitan Plan and TIP include the project. For projects that already completed NEPA, there is no need to delay further action, including: grant obligations; approvals of plans, specifications and estimates; and authorizations to begin construction.

If your office receives questions from a state or local transportation partner related to the impacts of this court decision on proposed planning actions or project approvals beyond what is described above, the most appropriate response is that FHWA and FTA, in coordination with OST and EPA, are reviewing the decision and evaluating next steps, and that we will provide updates as soon as possible. You should not speculate regarding the next steps that may be under review.

For 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). You may also contact Gloria Shepherd, Associate Administrator for the FHWA's Office of Planning, Environment and Realty (202-366-0116), or Sherry Riklin, Acting Associate Administrator for FTA's Office of Planning and Environment (202-366-5407) with any questions.

Thank you for your immediate attention to this guidance.

² The 82 areas are set forth in the tables below. We have requested confirmation of the affected counties and States from EPA and are awaiting its response.

**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, MD
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