

Implementing the 2008 Ozone National Ambient Air Quality Standard (NAAQS): Frequently Asked Questions

A. Background

A1: Will the transportation conformity rule be amended to address the new NAAQS?

A: On March 14, 2012, EPA issued a [final rule](#) restructuring two sections of the transportation conformity rule so that existing requirements will apply for any new or revised NAAQS without the need to amend the rule in the future merely to reference a specific NAAQS. The final rule became effective on April 13, 2012. A complete version of the regulations is available at 40 CFR [Parts 51](#) and [93](#). In addition, the complete Rule as amended is available on [EPA's conformity website](#).

A2. When did EPA finalize the 2008 ozone nonattainment designations?

A: EPA's 2008 ozone nonattainment designations for most areas in the United States were published in the [Federal Register](#) on May 21, 2012, with an effective date of July 20, 2012. The designations for several counties in Illinois, Indiana and Wisconsin for the Chicago nonattainment area were designated in a separate Federal Register notice on June 11, 2012 with the same effective date of July 20, 2012. Additional information can be found on [EPA's 2008 ozone designations website](#).

A3. How many areas are designated nonattainment under the 2008 ozone NAAQS? Are maps showing the boundaries of the nonattainment areas available?

A: A total of 46 areas were designated nonattainment under the 2008 ozone NAAQS. FHWA is preparing a set of maps to show the 2008 ozone boundaries, the MPO and state boundaries, as well as the 1997 ozone boundaries. These maps will be posted on [FHWA's website](#) when complete. EPA maps showing boundaries of the 2008 ozone nonattainment areas are available on [EPA's website](#).

A4. Where can I find additional guidance on how to address conformity under the 2008 ozone NAAQS?

A: In July 2012, EPA released, "[Transportation Conformity Guidance for 2008 Ozone Nonattainment Areas](#)" to assist areas with meeting transportation conformity requirements in areas designated nonattainment for the 2008 ozone NAAQS. This guidance also addresses revocation of the 1997 ozone NAAQS for transportation conformity purposes. At the same time, EPA also released, "[Guidance for Transportation Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas](#)" which describes how transportation conformity determinations are done in areas where multiple MPOs, states and/or other agencies have jurisdiction in a nonattainment or maintenance area, including the 2008 ozone NAAQS. In addition, [FHWA's conformity website](#) contains numerous guidance documents, research, and links to assist areas with meeting the conformity requirements. [EPA's conformity website](#) also contains guidance documents and technical information on emissions modeling and emissions reduction programs.

B. Timeframe for Transportation Conformity Determinations

B1: When do metropolitan transportation plan and TIP conformity determinations need to be completed for the 2008 ozone NAAQS?

A: The Clean Air Act §176(c)(6) (42 U.S.C. §7506(c)(6)), and the conformity rule (40 CFR 93.102(d)) provide a 12-month grace period for newly designated nonattainment areas before conformity applies. In new 2008 ozone nonattainment areas, conformity of the metropolitan transportation plan and transportation improvement program (TIP) must be determined by July 20, 2013 (one year after the effective date of final designations). Metropolitan and donut nonattainment areas must complete all of the tasks that are required for a conformity determination (e.g., interagency consultation, regional emissions analyses, public participation, MPO and FHWA/FTA conformity determinations) during the 12-month grace period in order to avoid a conformity lapse upon the expiration of the grace period. Note that the conformity lapse grace period found in the Clean Air Act §176(c)(9) (42 U.S.C. §7506(c)(9)) and the transportation conformity rule at 40 CFR 93.104(f) does not apply to newly designated nonattainment areas. Additional information can be found in FHWA's "[Frequently Asked Questions on the Transportation Conformity Lapse Grace Period](#)," question 10 and EPA's "[Transportation Conformity Guidance for 2008 Ozone Nonattainment Areas](#)," questions 2.1, 2.3 and 2.4.

B2: When is project-level conformity for the 2008 ozone NAAQS required?

A: After the one-year conformity grace period ends (July 20, 2013), a project-level conformity determination is required before a non-exempt Federal project in a 2008 ozone nonattainment area completes the NEPA process, as defined in 40 CFR 93.101. For projects that have completed the NEPA process prior to the end of the conformity grace period without a conformity determination for a new or revised standard, a project-level conformity determination would be required for the next project phase that requires FHWA or FTA approval. (40 CFR 93.104(d)) See Question C6 below for additional information on requirements for project-level conformity determinations in ozone nonattainment and maintenance areas.

B3: Can FHWA/FTA or EPA extend the 1-year grace period from the effective date of final nonattainment designation before conformity applies?

A: No, the 1-year grace period is in the Clean Air Act §176(c)(6) (42 U.S.C. §7506(c)(6)) and the conformity rule (40 CFR 93.102(d)), so no administrative flexibility can be offered.

C. Conformity under the 2008 Ozone NAAQS

C1: If an area determines conformity for the 2008 ozone NAAQS before the end of the grace period, would that start the four-year conformity update cycle?

A: The four year conformity update cycle would start when the 2008 ozone NAAQS conformity determination is made by FHWA/FTA, if the determination is based on a new regional emissions analysis. For example, if FHWA/FTA determines 2008 ozone conformity of a metropolitan transportation plan and TIP, based on a new regional emissions analysis, on August 1, 2012, the four-year update cycle would start on August 1, 2012. Therefore, the next 2008 ozone conformity determination based on a new regional emissions analysis would be required by August 1, 2016. However, metropolitan transportation plan/TIP update requirements, as well as the conformity frequency requirements of 40 CFR 93.104(b), (c), and (e) for other pollutants, would still apply. In other words, the 2008 ozone conformity determination in this case might not satisfy the metropolitan transportation plan/TIP update

frequency requirements of the planning regulations (23 CFR 450.322(c), 450.324(a)), nor the frequency requirements of 40 CFR 93.104(b), (c), and (e) for other applicable pollutants. An updated metropolitan plan/TIP, new regional emissions analysis and conformity determination would still be required when the metropolitan plan/TIP or conformity determination for any other applicable pollutants expires.

C2: How does a MPO that contains more than one nonattainment or maintenance area demonstrate conformity?

A: Clean Air Act section 176(c)(5) specifically states that conformity applies in nonattainment and maintenance areas. Therefore, an MPO that includes multiple nonattainment or maintenance areas may determine conformity at separate times for the portion of its metropolitan transportation plan/TIP in each separate nonattainment or maintenance area. However, all the conformity determinations must be completed by July 20, 2013. Ideally, the MPO should determine conformity of all portions of its metropolitan transportation plan/TIP at the same time. However, precedents have been set where conformity might be determined on the portion of the metropolitan transportation plan/TIP in one nonattainment area, but not in the other. Note, that the MPO must meet the transportation planning regulations for metropolitan transportation plans and TIPs in 23 CFR Part 450. See also section 1.4.5 of EPA's "[Guidance for Transportation Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas](#)".

C3: Can a metropolitan transportation plan and/or TIP be in conformity under the 2008 ozone NAAQS, but not in conformity for another pollutant?

A: Yes. If an area is designated nonattainment for both the 2008 ozone NAAQS and another pollutant (e.g., the 2006 PM_{2.5} NAAQS), then the metropolitan transportation plan and TIP must meet the conformity requirements for both pollutants. It is possible to have a situation where both sets of requirements cannot be met. For example, if the budget test is passed for ozone in the area, but not for the 2006 PM_{2.5} NAAQS, the portion of the MPO contained within the 2006 PM_{2.5} nonattainment area would enter the conformity lapse grace period and potentially could enter a conformity lapse a year later. However, if the nonattainment areas' boundaries do not overlap completely (i.e., a portion of the MPO is only within the 2008 ozone nonattainment area, but not within the 2006 PM_{2.5} nonattainment area), then that portion not within the boundaries of the 2006 PM_{2.5} nonattainment area would not enter the conformity lapse grace period or a conformity lapse a year later if conformity still cannot be demonstrated for the 2006 PM_{2.5} NAAQS.

C4: Does a conformity determination for the 2008 ozone NAAQS need to be accompanied by conformity determinations for other transportation related pollutants for which the area is nonattainment or maintenance?

A: Not necessarily. As long as an update or amendment to the metropolitan transportation plan/TIP is not taking place at the same time, a conformity determination for the 2008 ozone NAAQS would not need to address other transportation related pollutants for which the area might be nonattainment or maintenance. However, metropolitan transportation plan/TIP update requirements, as well as the frequency requirements of 40 CFR 93.104(b), (c), and (e) for the other pollutants, would still apply. In other words, the 2008 ozone conformity determination in this case would not satisfy the metropolitan transportation plan/TIP update frequency requirements of the planning regulations (23 CFR 450.322(c), 450.324(a)), nor the frequency requirements of the conformity rule at 40 CFR 93.104(b), (c), or (e) for the other pollutants.

C5. What is the conformity baseline year for the 2008 ozone area?

A: As explained in question 3.7 of EPA’s [“Transportation Conformity Guidance for 2008 Ozone Nonattainment Areas,”](#) for any NAAQS promulgated after 1997, the conformity rule at 40 CFR 93.119(e)(4) defines the baseline year for the baseline year test as the most recent year for which EPA’s Air Emissions Reporting Rule requires submission of on-road mobile source emissions inventories as of the effective date of designations. For the 2008 ozone NAAQS, this year is 2011. Conformity determinations using the baseline year test as an interim emission test must therefore use 2011 as the baseline year. See [EPA’s conformity baseline year website](#) for more information on baseline years.

C6: What is needed to demonstrate project-level conformity in 2008 ozone areas?

A: In areas that are nonattainment or maintenance for ozone, a project level conformity determination must show that the project comes from a conforming metropolitan transportation plan and TIP, and the project’s design concept and scope have not changed significantly since the metropolitan transportation plan and TIP conformity determination per 40 CFR 93.115. Additional project level conformity requirements may apply if the area is nonattainment or maintenance for other pollutants; such as hot-spot requirements in CO, PM10 and PM2.5 areas.

D. Conformity Transition for the 2008 and 1997 Ozone NAAQS

D1: If an area can demonstrate 2008 ozone conformity during the grace period, does it still have to meet the 1997 ozone conformity requirements, if the area is nonattainment (or maintenance) under both ozone NAAQS?

A: Yes. The 1997 ozone conformity requirements continue to apply until the 1997 ozone NAAQS is revoked. EPA revoked the 1997 ozone NAAQS for transportation conformity purposes only, and this revocation will occur one year after the effective date of designations of the 2008 ozone NAAQS ([77 FR 30160](#)). This date, July 20, 2013, coincides with the end of the conformity grace period for the 2008 ozone NAAQS. In most cases, areas will use the same conformity test for both the 1997 and 2008 ozone NAAQS; see Section 3 of EPA’s [“Transportation Conformity Guidance for 2008 Ozone Nonattainment Areas.”](#)

D2: Can a MPO rely on a previous regional emissions analysis, or portion thereof, conducted for a 1997 ozone conformity determination to determine conformity for the 2008 ozone NAAQS?

A: Yes, provided that they meet the requirements in 40 CFR 93.122(g). In particular, the regionally significant projects in the metropolitan transportation plan/TIP must be consistent with those assumed in the previous regional emissions analysis, and the design concept and scope of each regionally significant project cannot be significantly different from that assumed in the previous regional emissions analysis. In addition, the previous regional emissions analysis must be consistent with the requirements of 40 CFR 93.118 or 93.119, as appropriate. In particular, if the budget test is being performed under 93.118, the 2008 ozone attainment year must be included as an analysis year, and the previous regional emissions analysis must demonstrate conformity to all currently applicable budgets. See EPA’s [“Transportation Conformity Guidance for 2008 Ozone Nonattainment Areas”](#) (question 3.10) and [“Guidance for Transportation Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas”](#) for additional information.

D3: If the previous regional emissions analysis did not analyze the 2008 ozone attainment year, can the MPO rely on the previous regional emissions analysis for the other analysis years required, and only perform a new analysis for the 2008 ozone attainment year?

A: No. As discussed in question 3.10 of EPA's "[Transportation Conformity Guidance for 2008 Ozone Nonattainment Areas](#)," if the previous emissions analysis did not analyze the 2008 ozone NAAQS attainment year, an area cannot rely upon 40 CFR 93.122(g) for some years and perform a new analysis just for the new attainment year. However, if nothing else has changed for previous analysis years and emissions would be exactly the same as what would be generated if a new analysis was performed (i.e., the planned projects, latest planning assumptions, and emissions models have not changed), the modeling for those analysis years would not have to be repeated. In these cases, an area could include the applicable analyses from the previous conformity determination in its new determination.

D4: When does the four-year conformity update cycle begin for a conformity determination that relies on a previous regional emissions analysis?

A: A new metropolitan transportation plan/TIP conformity determination based on a completely new regional emissions analysis is required every four years from the date of FHWA/FTA's conformity determination per the frequency requirement of 40 CFR 93.104(b) or (c). If a conformity determination relies on any part of a previous regional emissions analysis, the frequency requirement is not satisfied.

D5: How is conformity done for the 2008 ozone NAAQS where there are no adequate or approved 1997 ozone, 1-hour ozone or 2008 ozone SIP budgets?

A: If no adequate or approved budgets exist for any ozone NAAQS for the 2008 ozone area, then the area must use the interim emissions test(s) required by 40 CFR 93.119. For more information, see 40 CFR 93.109(c)(3), EPA's [March 14, 2012 Final Rule](#) (77 FR 14979) and question 3.2 of EPA's "[Transportation Conformity Guidance for 2008 Ozone Nonattainment Areas](#)."

D6: For 2008 ozone areas that are larger or partially cover a previous ozone area (1-hour or 1997 ozone area) and choose to use the interim emissions test(s) for the whole nonattainment area, instead of just the additional area outside of the previous ozone area, do they still have to demonstrate conformity to the previous ozone budgets?

A: Yes. As stated in question 3.3 of EPA's "[Transportation Conformity Guidance for 2008 Ozone Nonattainment Areas](#)," even though these areas have the option of conducting the interim emissions test(s) for the entire area, they are still required to meet the 1997 ozone budgets within the 1997 ozone area (or portion thereof for areas that partially overlap). For more information, see 40 CFR 93.109(c)(2)(ii-iii), EPA's [March 14, 2012 Final Rule](#) (77 FR 14979) and EPA's "[Guidance for Transportation Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas](#)," section 4.

D7: How do you implement conformity in multi-jurisdictional areas?

A: EPA's "[Guidance for Transportation Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas](#)" describes how transportation conformity determinations are done in areas where multiple MPOs, states and/or other agencies have jurisdiction in a nonattainment or maintenance area. In addition, FHWA has completed a study "[Transportation Conformity Practices in Complex Areas](#)" that may be useful to new multi-jurisdictional areas to learn how others have demonstrated conformity in their complex areas.

E. Transportation Planning in 2008 Ozone Nonattainment Areas

E1: For a MPO that has previously been attainment and subject to the 5-year metropolitan transportation plan update requirement, but is now nonattainment under the 2008 ozone NAAQS, how does it transition to the 4-year metropolitan transportation plan/conformity update cycle?

A: The MPO must demonstrate conformity of its metropolitan transportation plan and TIP within one year of the effective date of the nonattainment designation, meaning by July 20, 2013 for the 2008 ozone standard. If an area has a valid plan in place (i.e., within the 5-year planning cycle for attainment areas), the area can demonstrate conformity on their existing plan provided that they meet all other requirements. However, the conformity determination will only be good for the rest of the original life of the plan (i.e., if less than 4 years left in the plan, the plan will expire on its original 5 year scheduled update) or 4 years after the conformity determination, whichever comes first. Alternatively, the MPO could make a conformity determination on a brand new plan by the end of the 12-month conformity grace period, which would start the 4-year update cycle for both the metropolitan transportation plan and conformity at the same time.

E2: For a MPO that is a newly designated urbanized area and designated nonattainment under the 2008 ozone NAAQS does it need to have a conforming metropolitan transportation plan and TIP in place by July 20, 2013?

A: No. [FHWA's Census Urbanized Areas and MPO/TMA Designation: Schedule of Activities](#) states that new MPOs must have a formally adopted metropolitan transportation plan and TIP by March 27, 2016. Therefore, a conforming metropolitan transportation plan and TIP would not need to be in place until March 27, 2016 (23 CFR 450.322(c) and 450.324(a)). If there are no other MPOs within the 2008 ozone nonattainment area, the newly urbanized area would be treated as an isolated rural area until a conforming metropolitan transportation plan and TIP are in place. Therefore, after July 20, 2013 (one year after the effective date of final 2008 ozone designations) no new non-exempt projects could be approved in the area without meeting conformity requirements for isolated rural areas. If there are other MPOs within the 2008 ozone nonattainment area, the newly urbanized area would be treated as a donut area until a conforming metropolitan transportation plan and TIP are in place.

F. 1997 Ozone Areas Transition Back to Attainment

F1: For a MPO that has previously been nonattainment or maintenance for the 1997 ozone NAAQS and subject to the 4-year metropolitan transportation plan/conformity update requirement, but will now be attainment for all pollutants when the 1997 ozone NAAQS is revoked for transportation conformity purposes on July 20, 2013, can it transition back to the 5-year metropolitan transportation plan update cycle?

A: EPA published a [final rule on May 21, 2012](#) that revoked the 1997 ozone standard for transportation conformity purposes only. The primary goal of the "limited revocation" of the 1997 ozone NAAQS for transportation conformity purposes was to avoid requiring conformity under two ozone NAAQS simultaneously. The May 21, 2012 rule did not address what requirements these areas need to meet for planning purposes.

DOT's statewide and metropolitan transportation planning regulations define nonattainment areas as areas that have been designated by EPA under section 107 of the Clean Air Act. Since the "limited revocation" of the 1997 ozone NAAQS applies to transportation conformity but did not address the

nonattainment or maintenance designation of an area for other purposes, the 1997 ozone area will still be nonattainment or maintenance until EPA finalizes the “complete” revocation of the 1997 ozone NAAQS. EPA has indicated that it will consider a comprehensive revocation in part 2 of the implementation rule. If the 1997 ozone areas that are in attainment of the 2008 ozone NAAQS need to complete a metropolitan transportation plan update during the transition time before EPA has finalized the complete revocation of the 1997 ozone NAAQS, these areas will need to meet all the requirements that apply to nonattainment and maintenance areas, including the 4-year update cycle and specific financial constraints requirements, as they are still “nonattainment” for transportation planning purposes.

F2: If EPA completely revokes the 1997 ozone NAAQS and if the MPO is in attainment for all pollutants, when does the MPO transition to the 5-year metropolitan transportation plan update cycle?

A: The 5-year metropolitan transportation plan update cycle will apply from the date of the most recent MPO metropolitan transportation plan adoption (not the most recent FHWA/FTA conformity determination). This is consistent with the May 21, 2001 FHWA/FTA guidance on "[Clarification of Plan Requirements in Nonattainment and Maintenance Areas](#)"

F3: Assuming EPA completely revokes the 1997 ozone NAAQS, will CMAQ apportionment be affected in areas that now will be attainment for all pollutants and will the State’s CMAQ funds be available for use in these previous nonattainment or maintenance areas?

A: Since EPA has not issued a full revocation of the 1997 ozone NAAQS at this time, we are unable to address potential CMAQ implementation issues due to the revocation. FHWA will provide additional guidance once EPA finalizes the revocation of the 1997 ozone NAAQS.