



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

Executive Director

1200 New Jersey Avenue, SE  
Washington, DC 20590

**FEB 10 2017**

The Honorable Larry Hogan  
Governor of Maryland  
Office of the Governor  
State House  
Annapolis, MD 21401

The Honorable Terry McAuliffe  
Governor of Virginia  
Office of the Governor  
State Capitol  
Richmond, VA 23219

The Honorable Muriel Bowser  
Mayor of District of Columbia  
John A. Wilson Building  
1350 Pennsylvania Avenue  
Washington, DC 20004

Dear Governor Hogan, Governor McAuliffe, and Mayor Bowser:

On February 8, 2016, the U.S. Department of Transportation (the Department) advised you that your respective jurisdictions may be subject to the withholding of up to five percent of the available Federal fiscal year 2017 Urbanized Area formula funds (formula funds) if you did not collectively establish a State Safety Oversight Program (SSOP) for the rail operations of the Washington Metropolitan Area Transit Authority (Metrorail), certified by the Federal Transit Administration (FTA), by February 9, 2017. A federally compliant SSOP has not been established. Therefore, as explained below, FTA is withholding the full five percent of your Urbanized Area formula funds until a certified SSOP for Metrorail is in place.

Federal law requires that states with federally-funded rail transit agencies establish a State Safety Oversight Agency (SSOA) responsible for safety oversight of those agencies pursuant to an SSOP. Currently, the SSOA responsible for conducting safety oversight of Metrorail is the Tri-State Oversight Committee (TOC).

On October 9, 2015, following a number of accidents and incidents and a demonstrated pattern of safety lapses involving Metrorail, FTA immediately assumed lead responsibility for safety oversight of Metrorail until the three jurisdictions replace the TOC with a fully compliant SSOA.

On February 8, 2016, the Department and FTA made a further finding under a provision of the recently-enacted Fixing America's Surface Transportation (FAST) Act that the TOC's SSOP was inadequate and that the TOC "is incapable of providing adequate safety oversight consistent with prevention of substantial risk of death or personal injury." FTA, therefore, would continue to administer the safety oversight of Metrorail.

Also, on February 8, 2016 the Department and FTA advised you that given the inadequacy of the TOC's SSOP, the two States and the District must create a new SSOP, which includes creation of a new SSOA, compliant with Federal requirements and certified as such by FTA, by February 9, 2017. As the Department and FTA explained at the time, under Federal public transportation safety law (49 U.S.C. § 5329(e)(8)(C)), failure to meet that deadline would put the three jurisdictions at risk of losing up to five percent of the annual Urbanized Area formula funds (49 U.S.C. § 5307) available throughout each jurisdiction.

Your jurisdictions recognized the need for a new Metrorail SSOA in a 2010 White Paper, and in 2012, Federal law significantly changed the requirements for SSOPs and SSOAs. However, the jurisdictions did not undertake meaningful efforts towards establishing a new SSOP and crafting supporting legislation until after FTA assumed the TOC's safety oversight responsibilities. In the meantime, because the jurisdictions did not fulfill the statutory safety responsibility, FTA has been forced to divert approximately \$6 million dollars a year from critical national transit safety programs to provide direct safety oversight of Metrorail.

The FTA staff has worked with Maryland, Virginia, and the District of Columbia to develop a federally compliant SSOP, but as of today, only the District of Columbia Council has passed the legislation necessary to make the new SSOP a reality. Even after Maryland and Virginia enact legislation, substantial work will remain in developing a federally compliant SSOP.

For these reasons, FTA is immediately withholding five percent of fiscal-year 2017 Urbanized Area formula funds to transit systems in Maryland, Virginia, and the District of Columbia. Under the current continuing budget resolution, which provides FTA funding through April 28, 2017, the amount to be withheld from all three jurisdictions totals approximately \$8.9 million. In the absence of a certified SSOP, future appropriations will also be subject to withholding, including additional funds for the remainder of fiscal year 2017.

Formula funds withheld will be associated with the following Urbanized Areas:

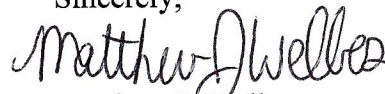
- Washington, D.C. (including Maryland (MD) and Virginia (VA) apportionments)
- Aberdeen-Bel Air South-Bel Air North, MD
- Baltimore, MD
- MD Statewide Apportionment - specific apportionment of funds allocated at the Governor's discretion to:
  - Cumberland, MD
  - Frederick, MD
  - Hagerstown, MD
  - Lexington Park-California-Chesapeake Ranch Estates, MD
  - Salisbury, MD

- Waldorf, MD
- Westminster-Eldersburg, MD
- Richmond, VA
- Roanoke, VA
- Virginia Beach, VA
- VA Statewide Apportionment - specific apportionment of funds allocated at the Governor's discretion to:
  - Blacksburg, VA
  - Bristol, VA
  - Charlottesville, VA
  - Fredericksburg, VA
  - Harrisonburg, VA
  - Kingsport, TN (VA apportionment only)
  - Lynchburg, VA
  - Staunton-Waynesboro, VA
  - Williamsburg, VA
  - Winchester, VA

The individual fund recipients – formally, FTA “designated recipients” – in your jurisdictions will receive a letter with specific details regarding the withholding of funds. It is important to note that the formula funds are being withheld, not forfeited. The funds will once again be available when FTA certifies an SSOP for Metrorail.

Safety is the Department's highest priority, and while FTA has engaged in robust safety oversight of Metrorail, that oversight is temporary and is ultimately a State and District responsibility. The future safety of the system requires that Virginia, Maryland, and the District of Columbia complete their work on a federally compliant SSOP without further delay. FTA staff members will continue to work diligently with your staff to ensure that a federally-compliant SSOP is in place as soon as possible, after which the withheld formula funds will be released.

Sincerely,



Matthew J. Welbes

cc: Phil Mendelson, Chairman, Council of the District of Columbia; Thomas V. (Mike) Miller, President, Maryland Senate; J.B. Jennings, Minority Leader, Maryland Senate; Michael Busch, Speaker, Maryland House of Delegates; Nicholas R. Kipke, Minority Leader, Maryland House of Delegates; Thomas K. Norment, Jr., Majority Leader, Virginia State Senate; Richard L. Saslaw, Minority Leader, Virginia State Senate; William J. Howell, Speaker, Virginia House of Delegates; David J. Toscano, Minority Leader, Virginia House of Delegates

Enclosure: Funding Allocation Chart

## FTA funds withheld from DC-MD-VA due to the absence of a State Safety Oversight Program

Amounts based on Further Continuing and Security Assistance Appropriations Act, 2017 (Pub. L. 114–254) for the period from October 1, 2016 through April 28, 2017. When a full year of funding is appropriated, additional funds could be withheld.

State	Urbanized Area	Designated Recipients	Urbanized Area Grant Program Apportionment	Amount Withheld (5%)	Amount available to Urbanized Areas after withholding	Notes
DC	Washington, DC-VA-MD	Washington Metropolitan Area Transit Authority (WMATA); Maryland Transit Administration (MTA); Potomac and Rappahannock Transportation Commission (PRTC)	\$104,189,761	\$5,209,488	\$98,980,273	The funds are apportioned by FTA to the entire urbanized area. The three designated recipients listed have a local agreement that determines the amount each recipient will receive.
MD	Baltimore, MD	Maryland Transit Administration (MTA)	\$38,258,909	\$1,912,945	\$36,345,964	
MD	Aberdeen-Bel Air South-Bel Air North, MD	Maryland Transit Administration (MTA)	\$1,811,535	\$90,577	\$1,720,958	
MD	MD Statewide Apportionment	Maryland Transit Administration (MTA)	\$7,135,068	\$356,753	\$6,778,314	The small urbanized areas in Maryland are listed below.
VA	Virginia Beach, VA	Hampton Roads Transit (HRT)	\$10,117,669	\$505,883	\$9,611,786	
VA	Richmond, VA	Greater Richmond Transit Company (GRTC) and the City of Petersburg	\$6,744,437	\$337,222	\$6,407,215	The funds are apportioned by FTA to the entire urbanized area. The two designated recipients listed have a local agreement that determines the amount each recipient will receive.
VA	Roanoke, VA	Greater Roanoke Transit Company (GRTC)	\$1,546,929	\$77,346	\$1,469,583	
VA	VA Statewide Apportionment	Virginia Department of Rail and Public Transportation (VDRPT)	\$8,114,504	\$405,725	\$7,708,779	The small urbanized areas in Virginia are listed below.
<b>TOTAL</b>			<b>\$177,918,812</b>	<b>\$8,895,941</b>	<b>\$169,022,871</b>	

### Statewide Apportionment Detail Information

<b>Urbanized Areas in Maryland Statewide Apportionment</b>	\$7,135,068	\$356,753	\$6,778,314	The state governor determines how the statewide apportionment is distributed among the urbanized areas listed. These are urbanized areas with population greater than 50,000 and less than 200,000.
Cumberland, MD-WV-PA Frederick, MD Hagerstown, MD-WV-PA Lexington Park-California-Chesapeake Ranch Estates, MD	Salisbury, MD-DE Waldorf, MD Westminster-Eldersburg, MD			
<b>Urbanized Areas in Virginia Statewide Apportionment</b>	\$8,114,504	\$405,725	\$7,708,779	The state governor determines how the statewide apportionment is distributed among the urbanized areas listed. These are urbanized areas with population greater than 50,000 and less than 200,000.
Blacksburg, VA Bristol-Bristol, TN-VA Charlottesville, VA Fredericksburg, VA Harrisonburg, VA	Kingsport, TN-VA Lynchburg, VA Staunton-Waynesboro, VA Williamsburg, VA Winchester, VA			





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## **FEDERAL LAW REQUIRES STATE SAFETY OVERSIGHT AGENCIES TO OVERSEE RAIL TRANSIT SAFETY**

In 1991, Congress enacted Federal transportation law stating that because rail transit is an inherently local activity, the States are the principal safety oversight authorities for rail transit systems. At the same time, Congress directed the Federal Transit Administration (FTA) to create and administer a State Safety Oversight Program (SSOP). In 2012, Congress passed legislation that greatly expanded FTA safety authority and required States with rail transit systems to strengthen their own SSOPs. In 2015, Congress again passed legislation giving FTA additional safety authority, including a provision that allows FTA to withhold Urbanized Area formula funds if it determines that a State Safety Oversight Agency (SSOA) is incapable of providing safety oversight and the State fails to establish a new, federally compliant SSOP within one year of FTA's determination.

## **INADEQUACY OF THE TRI-STATE OVERSIGHT COMMITTEE AS THE SSOA FOR WMATA METRORAIL**

The June 2009 Fort Totten collision of two Washington Metropolitan Area Transit Authority (WMATA) Metrorail trains, resulting in nine fatalities and dozens of injuries, exposed the inadequacy of the Tri-State Oversight Committee (TOC), the SSOA established and operated by the District of Columbia, Maryland and Virginia. Since April 2010, the three jurisdictions have recognized the need for the creation of a new, stronger and more effective SSOP and SSOA for Metrorail, but nearly seven years later, neither have been established. During this period, serious safety incidents continued to occur on the Metrorail system, and in October 2015, FTA assumed temporary and direct safety oversight of Metrorail from the TOC.

## **FTA SETS DEADLINE FOR DC, MD & VA TO OBTAIN CERTIFIED STATE SAFETY OVERSIGHT PROGRAM**

In January 2016, it was announced that the District of Columbia, Maryland and Virginia would not create a new SSOP for Metrorail in 2016. As a result, FTA exercised authority provided by Congress in the Fixing America's Surface Transportation (FAST) Act of 2015 to set a one-year deadline for the jurisdictions to establish an SSOP certified by FTA or risk the withholding of Federal transit formula funds. On February 8, 2016, FTA informed the Governors and the Mayor that failure to establish an FTA-certified SSOP by February 9, 2017 may result in the withholding of approximately \$15 million in Urbanized Area formula funds based on a full year Fiscal Year 2017 Federal appropriations. Notably, the jurisdictions did not undertake meaningful efforts to establish a new SSOP until after FTA assumed the TOC's safety oversight responsibilities, and serious efforts to craft legislation authorizing the creation of a new SSOA and SSOP did not begin until after the February 9, 2017 deadline was set.

## **FTA WITHHOLDS FEDERAL TRANSIT FUNDS FROM DC, MD & VA**

Safety is the highest priority of the U.S. Department of Transportation (DOT), and while FTA has engaged in robust safety oversight of Metrorail, that oversight is temporary and is ultimately a State and District responsibility. The future safety of the Metrorail system, its passengers and workers requires that the District of Columbia, Maryland and Virginia complete their work on a federally compliant SSOP without further delay.

As authorized in the FAST Act, on February 10, 2017, FTA is withholding five percent of Fiscal Year 2017 Urbanized Area formula funds from eight recipients in the three jurisdictions until the three jurisdictions establish a new, FTA-certified SSOP for WMATA Metrorail. The funds will be withheld (not forfeited) until the jurisdictions pass identical legislation and meet other statutory requirements so that FTA can certify a new SSOP for WMATA Metrorail. After certification is achieved, the withheld funds will be released and available for use.



Under the current Federal continuing budget resolution through April 28, 2017, the amount being withheld is approximately \$8.9 million for the two states and the district. Based on a full-year appropriation, the total amount that may be withheld in Fiscal Year 2017 is estimated at approximately \$15 million.

Formula funds associated with the eight FTA recipients, and as many as 23 urbanized areas throughout the District of Columbia, Maryland and Virginia, could see a reduction in available funds.

State	Urbanized Area	Designated Recipients
DC	Washington, DC-VA-MD	Washington Metropolitan Area Transit Authority (WMATA); Maryland Transit Administration (MTA); Potomac and Rappahannock Transportation Commission (PRTC)
MD	Baltimore, MD	Maryland Transit Administration (MTA)
MD	Aberdeen-Bel Air South-Bel Air North, MD	Maryland Transit Administration (MTA)
MD	MD Statewide Apportionment	Maryland Transit Administration (MTA)
VA	Virginia Beach, VA	Hampton Roads Transit (HRT)
VA	Richmond, VA	Greater Richmond Transit Company (GRTC) and the City of Petersburg
VA	Roanoke, VA	Greater Roanoke Transit Company (GRTC)
VA	VA Statewide Apportionment	Virginia Department of Rail and Public Transportation (VDRPT)

**WHAT DC, MD & VA MUST DO TO OBTAIN AN FTA-CERTIFIED STATE SAFETY OVERSIGHT PROGRAM**

In order for FTA to certify an SSOP for WMATA Metrorail, the District of Columbia, Maryland and Virginia must still take several key actions, including:

- Passing identical legislation by Maryland and Virginia State legislatures and the District of Columbia, and signed by the State Governors and District Mayor.
- Submitting a certification application and documentation to FTA showing that the SSOA has independence from the rail transit system it oversees; enforcement and investigation authority; adequate staffing and training; and has met general program requirements.
- Participating in a transitional hand-off period whereby FTA officials work side-by-side with new SSOA officials to ensure they are capable of conducting all oversight responsibilities required by Federal law.
- Verifying with FTA that the new SSOA’s enforcement and oversight capabilities, as well as their inspection, investigation and audit activities are adequate and meet all statutory requirements.



February 13, 2017

Environmental Protection Agency  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

Re: Comments on Proposed Regulations on Implementation of the 2015 National Ambient Air Quality Standards for Ozone (Docket No. EPA-HQ-OAR-2016-0202)

To the Environmental Protection Agency:

The American Association of State Highway and Transportation Officials (AASHTO) and the Association of Metropolitan Planning Organizations (AMPO) welcome the opportunity to submit these comments regarding the proposed regulations on implementation of the 2015 Ozone National Ambient Air Quality Standards (2015 Ozone NAAQS). The notice of proposed rulemaking (NPRM) was published in the Federal Register on November 17, 2016. (81 Fed. Reg. 81276).

AASHTO is a nonprofit, nonpartisan association representing the State transportation departments in the 50 states, the District of Columbia, and Puerto Rico. It represents the departments with respect to all five transportation modes: air, highways, public transportation, rail, and water. Its primary goal is to foster the development, operation, and maintenance of an integrated national transportation system. Our members work closely with USDOT agencies to operate, maintain, and improve the nation's transportation system.

AMPO is a nonprofit, membership organization established in 1994 to serve the needs and interests of "metropolitan planning organizations (MPOs)" nationwide. Federal highway and transit statutes require, as a condition for spending federal highway or transit funds in urbanized areas, the designation of MPOs, which have responsibility for planning, programming and coordination of federal highway and transit investments. AMPO offers its member MPOs technical assistance and

training, conferences and workshops, frequent print and electronic communications, research, a forum for transportation policy development and coalition building, and a variety of other services.

AASHTO and AMPO members have an interest in the proposed rule because the implementation of a new NAAQS has practical implications for the planning, development, and implementation of surface transportation projects. In particular, the adoption of a stricter NAAQS results in the designation of additional areas as nonattainment, causing those areas to become subject to transportation conformity requirements. In addition, some areas that were previously designated as nonattainment or maintenance for the old standard will become designated nonattainment for the new standard, potentially extending the time that they will remain subject to conformity requirements. The transition from the old to the new standard also creates the potential for increased regulatory burdens and uncertainty during the transition period.

To avoid undue delays and increased costs, AASHTO and AMPO members seek to ensure that transportation conformity requirements – for plans, programs, and projects – can be met as efficiently as possible. To that end, we offer the following comments and recommendations regarding the NPRM for implementation of the 2015 ozone standard.

### **1. Revocation of the 2008 Ozone Standard – Option 1 vs. Option 2.**

The NPRM proposes two options for revoking the 2008 ozone standard.<sup>1</sup> Under Option 1, the 2008 ozone standard would be revoked in each area one year after the effective date of the designation for the 2015 ozone standard. Under Option 2, the 2008 ozone standard would be revoked in an area only when that area is designated attainment for the 2008 standard, and no sooner than one year after the effective date of the designations for the 2015 ozone standard.

AASHTO and AMPO support Option 1 because, as EPA recognizes in the NPRM, this option will ensure that only one ozone NAAQS – the 2008 standard or the 2015 standard – would apply in an area, rather than having some locations where both standards are in effect. As stated in the NPRM:

The EPA believes it would be appropriate to revoke, rather than retain, the 2008 ozone NAAQS for all purposes because it would ensure that only one ozone NAAQS – in this case the more protective 2015 ozone NAAQS – would directly apply in an area, rather than having a situation in which two standards would apply concurrently. The EPA believes that the permanent retention of two standards, differing only in the ozone concentrations they allow, could result in unnecessarily complex implementation procedures and is not necessary to provide for timely attainment of the more stringent NAAQS.... Revoking (with appropriate anti-backsliding measures) rather than retaining the 2008 ozone NAAQS would facilitate a more seamless transition to ... [the] 2015 ozone NAAQS, and would ensure an efficient use of state and local resources in working toward attainment of that standard.<sup>2</sup>

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<sup>1</sup> 81 Fed. Reg. 81286.

<sup>2</sup> Id.



We endorse EPA's assessment of these options, and we therefore support Option 1 for substantially the same reasons set forth in the NPRM. We also support EPA's proposed approach to anti-backsliding requirements for Option 1, which would allow emissions budgets adopted for the 2008 standard to be used in transportation conformity determinations for the 2015 standard until new emissions budgets are developed for the 2015 standard.<sup>3</sup> We prefer this approach because it avoids unnecessary complexity in the transition to the new standard.

It is our understanding that, under Option 1, the transition in transportation conformity requirements would unfold as follows:

- Prior to effective date of 2015 standard: The 2008 standard remains in effect, and transportation conformity determinations are required for 2008 standard.
- During the one-year grace period following the effective date of the 2015 standard: The 2008 standard remains in effect, and transportation conformity determinations still are required for 2008 standard. In metropolitan areas, regional conformity determinations for plans and transportation improvement programs (TIPs) would need to be made for the 2015 standard before the end of this one-year period.<sup>4</sup>
- After the one-year grace period has ended: The 2008 standard is revoked upon conclusion of the one-year grace period (i.e., one year after the effective date of the 2015 standard). From that time onward, transportation conformity determinations for the 2008 standard are no longer required, and instead transportation conformity determinations *are* required for the 2015 ozone standard. During this period, conformity determinations would be made based on the emissions budget for the 2008 ozone standard until such time as emissions budgets are adopted for the 2015 ozone standard. Where areas do not have or are not required to develop motor vehicle emissions budgets, the appropriate interim emissions reduction tests would be required.

In supporting Option 1, we are cognizant of the complexities involved in the transition from one standard to another. We would not necessarily object to modifications to Option 1, as long as the same result is achieved as with Option 1 – namely, transportation conformity determinations are not required for the 2008 and 2015 ozone standards at the same time.

## **2. Transportation Conformity Guidance.**

The NPRM states that EPA intends to issue an update to existing transportation conformity guidance to address the transition to the 2015 ozone standard.<sup>5</sup> AASHTO and AMPO strongly

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<sup>3</sup> 81 Fed. Reg. 81288.

<sup>4</sup> In isolated rural nonattainment areas, plans and TIPs are not required. In those areas, conformity determinations for the 2015 ozone standard would need to be made, after the end of the one-year grace period, whenever the Federal Highway Administration or Federal Transit Administration approves a non-exempt project.

<sup>5</sup> 81 Fed. Reg. 81300.

encourage EPA to reach out to the transportation community – including State DOTs and MPOs – for input on the development of this guidance.

Providing an opportunity for comment on this guidance would be consistent with longstanding guidance to federal agencies on the development of significant guidance documents. The Office of Management and Budget (OMB) has recognized that “providing pre-adoption opportunity for comment on significant guidance documents can increase the quality of the guidance and provide for greater public confidence in and acceptance of the ultimate agency judgments.”<sup>6</sup> In addition, Executive Orders 12866 and 135633 encourage federal agencies, wherever feasible, to seek views of governmental entities prior to proposing requirements and to consider the most flexible, least-cost options for governmental entities consistent with regulatory objectives.<sup>7</sup>

In addition, providing an opportunity for comment will facilitate the development of the guidance and allow for greater efficiency in implementation. State DOTs and MPOs have extensive experience implementing the transportation conformity requirements for plans, programs, and projects. Their experience gives them invaluable knowledge about the practical difficulties that may arise in transitioning to a new standard. That experience shows that there are sometimes unintended consequences of new guidance. By consulting with states and MPOs prior to finalizing any guidance, EPA will be in a better position to anticipate the types of practical issues and concerns that may arise in implementation of the new standard.

Finally, we also encourage EPA to release the draft guidance for public review and comment as soon as possible. Under the timelines for implementation the 2015 standard, the nonattainment designations would take effect in October 2017, and all plans, programs, and projects in nonattainment areas would be subject to transportation conformity requirements within one year thereafter. Given the long lead time needed to make conformity determinations, it is important for the final guidance to be available by fall 2017.

### **3. Programmatic Conformity Determinations**

As EPA has recognized in the final rule adopting the 2015 ozone standard, some areas designated as “marginal” nonattainment for this standard will come into compliance without any additional actions being taken by the State.<sup>8</sup> As a result, Enhanced Monitoring Plans (EMPs) are not required in marginal nonattainment areas for the 2015 ozone standard.<sup>9</sup> Similarly, there is little value-added in requiring transportation conformity determinations to be made for the 2015 ozone standard in newly designated marginal nonattainment areas where EPA modeling shows the area will attain the

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<sup>6</sup> Office of Management and Budget, “Final Bulletin for Agency Good Guidance Practices,” 72 Fed. Reg. 3432, 3438 (Jan. 25, 2007).

<sup>7</sup> Executive Order 12866, “Regulatory Planning and Review,” 58 Fed. Reg. 51735 (Oct. 4, 1993) and Executive Order, “Improving Regulation and Regulatory Review,” 76 Fed. Reg. 3821 (Jan. 21, 2011).

<sup>8</sup> 80 Fed. Reg. 65292, at 65423 (Oct. 26, 2015).

<sup>9</sup> *Id.* (“The EPA agrees that based on current trends in O<sub>3</sub> concentrations and the EPA’s own projections, states in Marginal nonattainment areas likely will comply with the revised NAAQS without additional state-directed controls, and as such, an EMP is not necessary in Marginal O<sub>3</sub> attainment areas.”). Furthermore, motor vehicle emissions budgets and SIPs may not be required in marginal ozone nonattainment areas.

2015 ozone standard without further actions beyond those already in place. Compliance with transportation conformity is a substantial cost and administrative burden for those areas, especially for areas that have not previously been subject to conformity requirements for ozone.

In the interest of avoiding undue regulatory burdens, we urge EPA to provide a streamlined process for satisfying conformity requirements in areas that are in attainment for the 2008 standard and are designated as marginal nonattainment areas for the 2015 standard (i.e., newly designated nonattainment areas). One possible approach would be for EPA to establish a process under which the Federal Highway Administration (FHWA) can make a programmatic or categorical conformity determination for areas newly designated as nonattainment areas for ozone under the 2015 standard. Such a mechanism could include appropriate safeguards, such as monitoring and reporting to ensure that the area remains on track to achieve the 2015 standard. With appropriate safeguards, this approach would allow the goals of conformity to be achieved with much lower administrative burden on State DOTs, MPOs, the FHWA, and the EPA itself.

On a broader level, we note that reductions in transportation emissions are increasingly achieved by federal emissions standards and by technological changes such as the increasing use of electric vehicles. As a result, the transportation conformity process has increasingly become an exercise in tracking progress caused by decisions beyond the control of State DOTs, MPOs, and FHWA. We urge EPA to consider ways to revise the transportation conformity regulations to allow for increased use of programmatic and/or categorical conformity determinations for both regional and project-level conformity determinations. For example, projects are often delayed by the requirement to ensure ‘consistency in design concept and scope’ between the project as approved in the NEPA process and the project as defined in the regional air quality analysis that previously was completed for the MPO’s transportation plan and TIP. The need to update that regional analysis to reflect minor changes in the project – e.g., ramp location changes, or changes in project implementation year – can add months of delay to the NEPA schedule. We recommend consideration of programmatic approaches that could streamline the process for amending plans and TIPs to reflect minor changes in project design and implementation dates.

#### **4. ‘Exceptional Event’ Data – Consideration in Nonattainment Designations**

In the final rule establishing the 2015 ozone standard, EPA recognized that, as part of the process for making nonattainment designations, States may request to exclude monitoring data associated with “exceptional events” such as wildfires.<sup>10</sup> In that rule, EPA established an expedited schedule for States to submit such requests to EPA prior to EPA’s designation of nonattainment areas for the 2015 ozone standard. In doing so, EPA explained that its intent was to give States sufficient time to prepare and submit exceptional event demonstrations while still allowing the EPA sufficient time to consider those demonstrations before making nonattainment designations. EPA also acknowledged that “the schedule promulgated in this action is compressed, particularly for the third year of data to be used in a 3-year design value.”<sup>11</sup>

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<sup>10</sup> 80 Fed. Reg. 65,292 at 65,412 (Oct. 26, 2015).

<sup>11</sup> 80 Fed. Reg. at 65,413.

In February 2016, EPA issued guidance outlining the process for making nonattainment designations for the 2015 ozone standard.<sup>12</sup> This guidance included, among other things, the States' deadlines for submitting their proposed nonattainment designations and for submitting any exceptional event demonstrations. It also provided the date by which EPA would provide the required 120-day notice to a State if EPA intended to modify (rather than accept) the States' proposed nonattainment designations. The timeline is indeed extremely compressed, especially for 2016 air quality monitoring data:

- For 2014 and 2015 air quality data, the States' deadline for submitting the exceptional event documentation is **October 1, 2016**. For 2016 data, the States' deadline for submitting the exceptional event documentation is **May 31, 2017**.<sup>13</sup>
- EPA's deadline to provide 120-day notice to the States – indicating EPA's disagreement with the States' proposed nonattainment designations – is **June 2, 2017** (just two days after the exceptional event packages for 2016 data are submitted).<sup>14</sup>

Given this extremely compressed schedule, we expect that there will be unresolved requests for exceptional-event determinations at the time EPA issues the 120-day letters (June 2, 2017) and, potentially, at the time EPA makes its designations (October 1, 2017).

To ensure that areas are not incorrectly designated as nonattainment, we request that EPA exclude any data that is the subject of an unresolved request for an exceptional-determination at the time EPA makes its nonattainment designations in October 2017. In such cases, the proper course would be to designate an area as “unclassifiable” due to incomplete data, as permitted under EPA guidance.<sup>15</sup> After the exceptional event determination is made, EPA could then designate the area as either attainment or nonattainment, as appropriate.

## **5. Exceptional Event Data – Use in Transportation Conformity Determinations.**

On October 3, 2016, EPA issued a final rule on Treatment of Data Influenced by Exceptional Events (“Exceptional Events Rule”).<sup>16</sup> In announcing the final rule, EPA stated that it intends to issue guidance confirming, among other things, that air quality data excluded under the Exceptional Events Rule will also be excluded when selecting appropriate background concentrations for use in transportation conformity hot spot analyses.<sup>17</sup> The guidance also will identify “potential pathways” for excluding data from exceptional events when determining the potential for future NAAQS exceedances in the context of a transportation conformity analysis.<sup>18</sup>

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<sup>12</sup> Memorandum from Janet McCabe, Acting Assistant Administrator, to EPA Regional Administrators, “Area Designations for the 2015 Ozone National Ambient Air Quality Standards” (Feb. 25, 2016) (“McCabe Memo”).

<sup>13</sup> McCabe Memo, Attachment 2.

<sup>14</sup> McCabe Memo, Attachment 1.

<sup>15</sup> McCabe Memo, p. 9 (“In certain cases, there may be insufficient information to support a designation of nonattainment or attainment for an area.”).

<sup>16</sup> 81 Fed. Reg. 68216, 68229 (Oct. 3, 2016).

<sup>17</sup> Id.

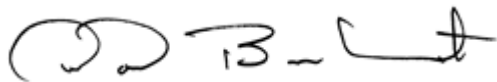
<sup>18</sup> Id.

AASHTO and AMPO agree that data associated with exceptional events should be excluded for purposes of transportation conformity determinations. We are concerned, however, that the timeframe for EPA to approve an exceptional event determination may be very lengthy, so the results of that determination may not be available at the time a transportation conformity needs to be made for a transportation plan or program or for an individual project.

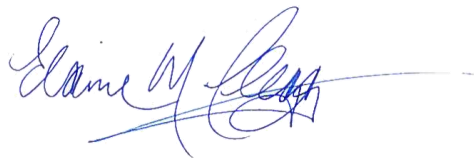
In light of these concerns, we urge EPA to consider developing an expedited process for making exceptional event determinations specifically for purposes of the data used in a transportation conformity determination (for any pollutant for which that data may be relevant). One suggestion would be for EPA to make a finding that, while an exceptional event determination is under review, the transportation agencies may use the assumptions and data in the exceptional event determination request, as needed, in their conformity determinations. This would help ensure that EPA reviews of exceptional events determinations do not impact conformity schedules and thus do not impact the implementation of transportation plans, programs, and projects. This process for handling exceptional-event data should, if possible, be made available along with the transportation conformity guidance by fall 2017.

Thank you for the opportunity to comment on EPA's proposed NAAQS for Ozone. Should you have any questions, please contact: Shannon Eggleston from AASHTO at 202-624-3649, or Bill Keyrouze from AMPO at 202-624-3680.

Sincerely,



David Bernhardt  
President  
AASHTO



Honorable Elaine Clegg  
President  
AMPO



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February 13, 2017

Bridget Newton  
Chair  
Transportation Planning Board

Dear Ms. Newton and Board Members:

The White Flint/Pike District area in North Bethesda, Maryland is transforming into a walkable, transit-oriented community, a vibrant neighborhood of residents of all ages, unique shops and restaurants, and large and small businesses. Hundreds of millions of dollars are being invested in this area by dozens of property owners and by Montgomery County, and significant additional investment is planned over the next twenty years.

As residents, property owners, government employees, and businesses, we are strong supporters of Metro. We use Metro to get to jobs, homes, and entertainment, and we believe Metro is an indispensable part of our community. It is because we believe in Metro that we are convinced that service cutbacks as described in WMATA's proposed budget would be extraordinarily damaging to not just the White Flint/Pike District area but also the entire metropolitan area. ***Quite simply, headways at the WMATA White Flint Station must remain every six minutes during peak times, and headways must be far more frequent than the proposed fifteen minutes during nonpeak hours. Diminished service during both peak and non-peak times would decimate the White Flint/Pike District area.***

A central tenet of the Pike District/White Flint redevelopment is easy access to transit, primarily Metrorail. In fact, the 2010 White Flint Sector Plan has a non-auto driver mode share (NADMS) requirement of 51% for residents and 50% for employees, which can't be achieved without Metro. More than a million square feet of office space, 6,000 residential units, two hotels, and approximately one and a half million square feet of retail space are in the pipeline to be built over the next few years in the Pike District. That is on top of thousands of homes and jobs that already exist in the White Flint area. Of course, WMATA, as the owner of a significant joint development property at the White Flint Metro Station, has an economic stake in White Flint as well. Both future and current development is dependent upon frequent, reliable metro service at the White Flint station during both peak and non-peak hours.

The transit-oriented development of the Pike District obviously requires frequent, reliable transit. Metro enables workers to reach their jobs at the North Bethesda Marriott, NRC, and dozens of other offices and businesses. It is the reason thousands of people will choose to lease the new apartments being built at Pike and Rose, the Gables, North Bethesda Center, East Village, and Saul Centers and is reflected in the Pike District property values. It is an essential amenity that attracts businesses to the Pike District and is the foundation of the Pike District economy.

We the undersigned are sympathetic to Metro's budget woes, but we believe that dedicated funding is the solution, not drastic service cutbacks that could all too easily launch both a Metro death spiral and a subsequent Pike District death spiral. We look forward to working with you to find sources for dedicated funding because we adamantly oppose any service reductions to the White Flint Metro station. Thank you, and we hope to meet with you soon to discuss our concerns.

Sincerely,

Action for Community Transit	North Bethesda Center
All Eyes on Rockville	North Bethesda Market
B.F. Saul	North Bethesda Marriott Hotel and Conference Center
Chesapeake Public Strategies	Pike and Rose
Coalition for Smarter Growth	Old Georgetown Village Condominiums
Combined Properties	Old Georgetown Village Townhomes
Communities for Transit	Quantum Companies
East Village/North Bethesda Gateway	Promark
Federal Realty Investment Trust	Randolph Civic Association
Friends of White Flint	Saul Centers West
The Forum Condominiums	SnyderCohn
Gables Residential	Maryland State Delegate Marc Korman
The Greater Bethesda Chamber of Commerce	TDG/SILVEROCK Realty
Georgetown Village Condominium	The Tower Companies
Greater Farmland Civic Association	Visit Montgomery
JBG	White Flint Downtown Advisory Committee
Klinedinst Management	White Flint Mall
LCOR	White Flint Station Condominiums
Lerner Enterprises	Willco
Montgomery County Chamber of Commerce	The Wisconsin Condominiums
Montgomery County Economic Development Corporation	.
Montouri Property, LLC	