



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, VIRGINIA 23219 2000

Gregory A. Whirley
Commissioner

September 10, 2010

Air Docket
Environmental Protection Agency
Mailcode: 2822T
1200 Pennsylvania Ave., NW.
Washington, DC 20460

Attention: Docket ID No. EPA-HQ-OAR-2009-0128

Dear Sir or Madam:

The Virginia Department of Transportation (VDOT) appreciates the opportunity to comment on the *Transportation Conformity Rule Restructuring Amendments* for which a proposed rule was published in the Federal Register on August 13, 2010. We generally support the comments submitted jointly by the American Association of State and Highway Transportation Officials (AASHTO) and the Association of Metropolitan Planning Organizations (AMPO), and offer the following additional comments as priorities.

We preface our comments by stating that we appreciate and support efforts to restructure and streamline the conformity rule. However, we do have a number of concerns with the proposed changes. These are listed below, along with recommendations for their resolution:

- Restructuring versus substantive changes: While the title and introduction indicate the intent of the proposed rule is “restructuring”, the proposed rule goes beyond a simple restructuring in some places to include substantive changes that may result in significant delays or additional costs for compliance. This concern may be addressed by limiting any changes at this time to ones consistent with the stated intent of restructuring, that is, ones that are not substantive in nature and do not introduce significant delays or added costs for compliance. Substantive changes can be addressed following additional review and comment.
- Additional Analysis Year – 93.118(d)(2): A primary concern is the proposed requirement that regional conformity analyses include a conformity analysis year within the first five years of the transportation plan timeframe (if an attainment year for modeling does not otherwise fall in that period). This effectively requires for many areas the addition of a modeling year, with corresponding additional costs and delays to the conformity analysis process. As such, it represents a substantive change to the current rule and not a simple restructuring. The final rule should not include the proposed requirements for an additional modeling year.

- Change to the Interim Test Baseline Years - 93.119(e)(4): The proposed change to the determination of baseline years is both a restructuring and, if adopted as proposed, a substantive change. If the effect of the restructuring as proposed is to require a later year than is currently required to be used as a baseline year for conformity analyses, and emissions are on a downward trend, the proposed change would effectively make budget tests more stringent than they are under the current rule. This concern may be mitigated by keeping the baseline year at or near the current baseline year (2002). If the final rule effectively requires as proposed a later year consistent with years specified for on-road mobile source emission inventories required by the EPA Air Emission Reporting Rule (40 CFR 51A), it should not require that later year to be used in conformity analyses until the associated inventories (which take significant time to prepare) have been submitted to and accepted by EPA.
- Clean Data - 93.109(c)(5)(iii): The proposed establishment of motor vehicle emission budgets based on data for the most recent year that nonattainment areas have met national ambient air quality standards is a substantive change, as budgets based on "most recent" and "clean" years may reasonably be expected to be lower and the associated conformity tests significantly more stringent than otherwise would be the case. This concern is compounded as the decision to request these more stringent budgets is proposed to be assigned to the "state or local air quality agency", potentially excluding affected state and local transportation agencies from the decision-making process. Given that the federal conformity rule and many state conformity regulations require interagency consultation, the apparent exclusion of state and local transportation agencies from the decision-making process may simply be an oversight that can be corrected in the final rule. The concerns may therefore be mitigated by confirming in the final rule that (1) the use of such Clean Data budgets is optional and (2) they cannot in any case be requested without the consent of the affected state and local transportation agencies that must be involved at a minimum through interagency consultation processes established pursuant to federal and state conformity regulations.

Additionally, we strongly support the development of guidance (and not additional regulation) as referenced in the preamble for conformity for areas designated nonattainment for secondary standards. State and local transportation agencies and other affected parties should be proactively and extensively consulted in the development of this guidance.

Once again, thank you for the opportunity to comment on the proposed rule. If you have any questions about these comments, please feel free to contact me at (804) 371-6831 or by email at steve.long@VDOT.Virginia.gov.

Sincerely,



Stephen J. Long
State Environmental Administrator