



September 13, 2010

Air Docket, Environmental Protection Agency
Mail Code: 2822T
1200 Pennsylvania Avenue NW
Washington, DC 20460
Attention Docket ID No. EPA-HQ-OAR-2009-0128

Re: EPA's Request for Comments on the Proposed Transportation Conformity Rule Restructuring Amendments, Docket ID No. EPA-HQ-OAR-2009-0128, RIN 2060-AP57

Dear Sir or Madam:

The American Association of State Highway and Transportation Officials (AASHTO) and the Association of Metropolitan Planning Organizations (AMPO) appreciate the opportunity to review and comment on the Environmental Protection Agency's (EPA) proposed Transportation Conformity Restructuring Amendments as contained in the August 13, 2010 Federal Register. AASHTO and AMPO also appreciate EPA's effort to restructure and streamline the conformity regulation. Such efforts help reduce the need to revise the conformity regulation in the future.

In reviewing the proposed rule, we have identified the following issues that EPA should address in the final rule:

Restructure of 40 CFR 93.109:

AASHTO and AMPO support the proposed restructuring of Section 93.109 to provide the requirements for regional conformity tests in one paragraph, and project-level conformity tests in another. We understand that EPA is not proposing any changes to existing regional conformity tests or hot-spot analyses requirements with the restructuring changes. We believe these changes will help streamline the conformity regulation and reduce the need to revise the conformity rule when new or revised National Ambient Air Quality Standards (NAAQS) are promulgated.

We suggest, however, that the provisions relating to a NAAQS "in a nonattainment area that has approved or adequate motor vehicle emissions budgets in an applicable implementation plan or implementation plan submission for another NAAQS of the same pollutant" be

clarified. We understand that if an 8-hour ozone nonattainment area does not yet have an approved or adequate budget it must use the 1-hour ozone budget if one exists. But how does this provision apply, for example, if an area has a NO_x budget in place? The NO_x budget could be for an ozone, particulate matter, or nitrogen dioxide NAAQS. Also would this provision apply if an ozone secondary standard is promulgated and nonattainment areas are designated, even though the form and averaging times of the primary and secondary ozone standards could be significantly different? Clarification of this provision will help reviewers to better understand how the conformity analyses are to be done.

Additional Option for Areas That Qualify for EPA's Clean Data Regulations or Policies:

EPA is proposing to extend to any nonattainment area that is covered by EPA's clean data regulations or policies the flexibility to use the most recent year of clean data as the motor vehicle emissions budget(s) for the conformity test if:

- the state or local air quality agency requests the flexibility and EPA approves it; and
- the areas have not submitted a maintenance plan for the respective NAAQS and EPA has determined that these areas are not subject to the CAA reasonable further progress and attainment demonstration requirements for the respective NAAQS.

AASHTO and AMPO recommend that EPA clarify whether or not the use of such budget test is still an option for State DOTs and MPOs making the conformity determinations after they are submitted by a state or local air quality agency and approved by EPA. If such budget tests become binding on State DOTs and MPOs once approved, then we recommend that the rule require the state or local air quality agency to go through the interagency and public consultation process to proactively involve all interested stakeholders (including specifically federal, state and local transportation agencies and organizations) before such budgets are submitted to EPA for approval.

Baseline Year for Certain Nonattainment Areas:

EPA is proposing to revise 40 CFR 93.119 to define the baseline year for conformity purposes as the most recent year for which EPA's Air Emissions Reporting Requirements require submission of on-road mobile source emissions inventories. Since emission inventories are not always submitted on time, AASHTO and AMPO recommend that EPA clarify whether the baseline year will be established by the year emissions inventories are required to be submitted or by the date they are actually submitted. The policy in place for newly designated nonattainment areas for the 1997 ozone standard implemented in 2004 was a conformity test with a build year of 2005 based upon a 2002 base-year. To be consistent with existing policy, AASHTO and AMPO suggest the rule be revised to state that the base-year should be the most recent emissions inventory year that has been completed and submitted to EPA and is not less than a minimum of three years from the build year network. If it is less than three years from the build year network, then the previous emissions inventory year submittal should be used.

Transportation Conformity Requirements for Secondary NAAQS:

EPA proposes to clarify transportation conformity requirements in areas designated nonattainment or maintenance for a transportation-related secondary NAAQS. EPA further states in the preamble that it will issue guidance as needed to assist areas in implementing conformity requirements for new NAAQS, including any secondary NAAQS for the 2010 ozone standard, if applicable. A secondary standard that uses a different form and/or averaging time than the primary standard, such as the proposed cumulative seasonal form of the W126 ozone secondary standard, is a significant issue for transportation officials. This is because state and local transportation agencies do not have experience modeling emissions in such areas, the proposed rule does not state what the conformity tests will be, and because there is a lack of information on the types of transportation strategies that would effectively address a cumulative seasonal form of the standard. Most traditional transportation control strategies are targeted at reducing emissions from work trips during peak traffic periods, and may not effectively reduce emissions to address the W126 form of the standard.

For the above reasons, AASHTO and AMPO recommend that EPA issue a separate proposed rulemaking, rather than guidance, that addresses the conformity process in secondary nonattainment or maintenance areas when the secondary standard differs from the primary standard. We also recommend that EPA consult with federal, state, and local transportation agencies early in the development of such a proposal to ensure that a workable conformity process results. As noted in our March 22, 2010 letter on EPA's proposed NAAQS for Ozone, we recommend that a proposed conformity rule for a secondary standard:

- provide sufficient information for the transportation community to assess the potential impacts it will have on state and local transportation and air quality planning efforts.
- address the potential transportation conformity implications of a secondary standard, including the cumulative seasonal form of the W126 ozone secondary standard, to enable transportation officials to fully evaluate their impacts on transportation programs. **We recommend that a regional conformity emissions analysis not be required unless the State finds that transportation related precursor emissions in a nonattainment area for a secondary standard are a significant contributor to such nonattainment.**
- support State efforts to demonstrate that mobile source emissions are insignificant in remote and rural areas and in areas where nonattainment is largely caused by ozone transport.
- discuss the types of transportation strategies that would effectively address a secondary standard, including a cumulative seasonal form of the standard.

Analysis of a Near-Term Year in the Budget Test

EPA proposes that when the attainment year has passed, or when an area's attainment date has not been established a near-term year would have to be analyzed when using the budget test. For these cases, EPA proposes to amend 40 CFR 93.118(d)(2) to require areas to analyze a

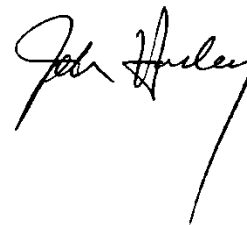
year no more than 5-years beyond the year in which the conformity determination is being made.

AASHTO and AMPO oppose this additional analysis year and disagree with EPA's statement that it will not add significant additional analytical burdens. AASHTO and AMPO do not believe that the rationale stated in the preamble supports this change as it does not indicate where or how the lack of such an analysis year has created any problems for the current conformity process. Also we believe that it can add significant additional burdens, especially in areas with staff, budget, and time constraints. An additional analysis year creates additional costs for conducting additional transportation demand and emissions modeling and for additional interagency consultation; can result in more frequent TIP amendments and conformity analyses if projects in the first 5-years cross analysis years, etc. This burden will increase as it is extended to new nonattainment areas designated under new and revised NAAQS.

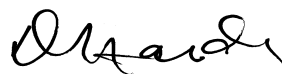
If EPA includes this provision in the final rule, it should clarify if it relates to just nonattainment areas or if it also applies to maintenance areas. Most of the preamble language and the proposed regulatory language refer to nonattainment areas. However, the preamble includes an example for maintenance areas.

Thank you for the opportunity to comment on EPA's proposed Conformity Restructuring Amendments. Should you have any questions, please contact: Shannon Eggleston from AASHTO at 202-624-3649 or Rich Denbow from AMPO at 202-296-7051, ext. 5.

Sincerely,



John Horsley
Executive Director
AASHTO



DeLania Hardy
Executive Director
AMPO

CC: April Marchese, FHWA