

Mr. Chairman and Members of the Committee, my name is John Njord. I am Director of the Utah Department of Transportation. I am here today to testify on behalf of the American Association of State Highway and Transportation Officials (AASHTO) which represents the departments of transportation in the fifty states and the District of Columbia and Puerto Rico. We want to thank you and the Members of your Subcommittee for convening this hearing to address the transportation conformity provisions contained in H.R. 3, The Transportation Equity Act: A Legacy for Users (TEA LU).

In my testimony today I will discuss how H.R. 3 addresses “next-generation” refinements to the transportation conformity process to build on the experience we have gained over the last nearly fifteen years. We would like to see procedural modifications to conformity to enable better alignment and greater consistency between the transportation and air quality planning processes, including analytical tools and planning assumptions.

The policy objective of the transportation conformity process, which was adopted with the enactment of the Clean Air Act (CAAA) in 1990, is to coordinate air quality and transportation planning by ensuring that transportation plans are consistent with planning for attaining federal air quality standards. The results have been positive---coordination between air quality and transportation planning has improved and cooperation between air quality and transportation planning office has increased. The process has resulted in greater awareness of decision makers of the linkages between transportation and air quality and has encouraged broader involvement in transportation planning by stakeholders. We support and applaud these improvements.

Nevertheless, after nearly fifteen years of experience, we believe the transportation conformity process is still not working as effectively as it could. Misalignments and inconsistencies in planning horizons, planning updates, assumptions and modeling tools result in unnecessary complexity and confusion.

The impact on transportation programs is substantial. Since 1999, 74 nonattainment or maintenance areas have had a conformity lapse, putting billions of dollars for transportation projects on hold. In over half of these areas, the reason for the lapse was simply confusion about deadlines. Process inefficiencies impose an additional administrative burden with sizable opportunity costs – scarce staff and resources are diverted from addressing the wide array of existing and emerging transportation policy challenges, including for example, safety, security and broader environmental and community objectives.

AASHTO has identified several procedural improvements to the conformity process – improvements which would harmonize the transportation and air quality planning process and reinforce the role of conformity to ensure consistency with SIPs. The goal is simply to strengthen the connection between transportation and air quality planning by making common sense improvements to the conformity process that will benefit transportation and air quality agencies alike.

Align Planning Horizons

Metropolitan transportation plans are required to have a minimum of a 20-year planning horizon. State Implementation Plans (SIPs) are for a period that extends to the attainment date with the latest being 2021. The vast majority of MPOs have attainment dates of 2013 or earlier. Transportation agencies need to demonstrate conformity to the last year of the plan which means that on-road mobile sources are constrained to the motor vehicle emissions budget from the attainment year to the last year of the transportation plan unless SIPs specifically establish budgets for years after the attainment date yet within the transportation planning horizon. Also, there can be no credit taken for technology or other measures that may be available during the out-years unless those measures have a regulation in place and implementation is assured.

The mismatch in the timeframes for transportation and air quality plans has placed an undue burden on the on-road mobile sector where there are very few measures remaining that can be implemented that will yield significant emissions reductions. This is especially true as vehicles continue to get cleaner and federal controls on vehicles are phased in. This has caused problems for transportation agencies in making conformity determinations, which is a criterion for receiving Federal highway and transit funding.

AASHTO’s Policy Recommendation: Require conformity determination on the first ten years of the transportation plan or to the attainment date, whichever is the longer time period. For informational purposes, regional emissions analysis would be done on the remaining years of the transportation plan.

To address this issue we believe that the following provisions of H.R.3, The Transportation Equity Act: A Legacy for Users could be improved.

Time Horizon for Conformity Determinations in Nonattainment Areas (Section 1824 (c))

H.R. 3 continues the requirement that the conformity finding be based on the final year (at least 20 years in the future) of the transportation plan. However, *at the election of the MPO and an air pollution control agency...*, the conformity finding may be based on the latest of: (1) the 10th year of the plan; (2) the attainment date of the SIP; or (3) the year after the completion date of a regionally significant project, if approval is required before subsequent determination. Regional emission analysis must be done for the remaining years of the Plan.

While we agree with the provision generally, we request two changes that would improve the efficiency and effectiveness of the conformity process.

We support the three options for the end date of the regional emissions analysis, especially given the fact that many MPOs are now developing plans that go for 25 or even 30 years. However, we request that the regional emissions analysis for the “out-years” be conducted *for informational purposes only*, if at all. The value of estimating

emissions out 20 years or more is marginal at best given the models and tools in place and the margins of error inherent in such estimates. If this analysis is done for informational purposes only, it will give the MPO and applicable air quality agency a rough sense of whether there may be an issue in the future, but would not carry any new real or perceived policy or regulatory burdens.

The second change we request is that the MPO be required to *consult* with the applicable air quality agency on the end date of the analysis, but that the *concurrence of such agency not be required*. U.S. DOT (FHWA and FTA) is responsible for making the final conformity determinations and the MPOs are the regional entities charged with responsibility for developing the initial determinations, through a prescribed interagency consultation process. This process is established in MPO regions and works. We suggest this is the process that should be used to determine the horizon for the conformity determination. With this change, H.R. 3 would not confer new authorities on air quality agencies and, in effect, provide air quality agencies veto power in the conformity process.

Provide More Predictable and Coordinated Planning Update Cycles and Consistent Planning Assumptions.

Transportation plans must be updated not less frequently than every three years. Transportation Improvement Programs (TIPs) must be updated every two years. In addition, there are various SIP-related triggers in the transportation conformity rule that require plan and TIP updates within 18 months of various SIP actions. State Implementation Plans (SIPs) do not have a regular update cycle and are not updated frequently.

This has created a situation where transportation plans are updated regularly while SIPs are updated on a discretionary and sporadic basis, resulting in overlapping plan cycles, public confusion, less time spent on other important planning tasks and a continuous conformity process in many areas. In addition, the unpredictable nature of the 18-month SIP triggers for conformity redeterminations has caused uncertainty in the transportation planning and TIP development processes. Because transportation plans, TIPs and SIPs must use the latest planning assumptions each time they are updated; the assumptions used in SIPs tend to be older than – and inconsistent with -- those in transportation plans and TIPs. AASHTO believes that the conformity process must provide a more predictable and coordinated transportation and air quality plan update cycle along with consistent planning assumptions.

AASHTO’s Policy Recommendation: Require update of metropolitan transportation plans and TIPs at least every five years with transportation conformity determinations required after each update, unless more frequent updates of the TIP are needed.

To address this issue we support the following provision of H.R.3, The Transportation Equity Act: A Legacy for Users but believe it could be improved .

TIP Update Cycle (Section 6001)

We support H.R. 3's provision that provides for a four year update of the TIP but believe that it could be improved by extending the update cycle to five years.

Require Conformity Only for Nonattainment and Maintenance Areas

Transportation conformity determinations must be undertaken for all nonattainment and maintenance areas. Currently, if an area has completed its 20-year maintenance period prior to the last year of transportation plan, the area still must meet conformity requirements all the way to the last year of the transportation plan – the “horizon year” (e.g., end of 20-year maintenance period is 2006 and the transportation plan horizon is 2025). Because some areas are approaching the end of their 20-year maintenance periods, this situation is beginning to surface. Similarly, when Maintenance Plans reach their 8-year update point, the new SIP budget need only be for 10 years out, rather than the 20+ years required for transportation plans.

AASHTO's Policy Recommendation: Clarify that conformity determinations are required only for that time period when an area is classified as nonattainment or maintenance, and analysis must be done only to the end of the maintenance period.

To address this issue we believe that the following provisions of H.R.3, The Transportation Equity Act: A Legacy for Users could be improved.

Conformity to the End of the Maintenance Period (CAA section 175(A)(b))

H.R. 3 section 1824(c) would limit conformity to the end of the maintenance period required under CAA section 175(A)(b), *provided the MPO and air quality agency agree*. This would, as noted above, confer new authorities to the air quality agencies, which would be inconsistent with current practice and with the extensive consultation process currently in place in each nonattainment and maintenance area. We believe that conformity should be limited to the end of the maintenance period, which is at a minimum 10 years after an area attains federal standards.

Synchronize Sanction Clocks

In the event of a conformity lapse, there are immediate consequences in that only certain types of transportation projects may proceed until the lapse is resolved. In contrast, in the event of a SIP failure, there is an 18-month period in which to correct the SIP failure prior to the imposition of sanctions. In essence, a conformity lapse functions as an immediate sanction with no time permitted to correct situations that might have led to the lapse.

AASHTO's Policy Recommendation: Align the conformity lapse with same 18-month time clock for imposition of sanctions for SIP failures in order to provide a similar amount of time to correct deficiencies in transportation plans and TIPs.

To address this issue we support the following provisions of H.R.3, The Transportation Equity Act: A Legacy for Users.

Conformity Lapse (Section 1824(e))

We support the H.R. 3 language on conformity lapse, which would allow 12 months to correct a Plan/TIP deficiency. While still not totally consistent with the SIP process, this provision would make the conformity process more consistent with the State Implementation Plan (SIP) process for air quality planning which allows 18 months to correct deficiencies prior to the applicability of any sanctions.

Transition to New Standards

Transition to New Air Quality Standards Before New Budgets are Available

While H.R. 3 does not address this issue, we support adding language that would allow areas that are transitioning into new air quality standards to use existing motor vehicle budgets for the same pollutant or other emission tests to demonstrate conformity before new budgets are available. There are numerous inconsistencies in the new nonattainment boundaries for ozone, for example, where the boundaries are generally not the same under the new 8-hour standard as they were under the 1-hour standard. *H.R. 3 should provide MPOs the option to either use the existing 1-hour budget or other emission tests (new interim emissions tests are included in the recently updated conformity rule).* This would help address the boundary inconsistencies in the way that makes most sense in each nonattainment or maintenance area. The established interagency consultation process would be used to determine which tests or budget should be used.

Conclusion

We are encouraged by the proposed changes in the transportation conformity process and request the changes discussed above. AASHTO appreciates the opportunity to work with you and your subcommittee, and looks forward to continuing to explore approaches with you for improving transportation and air quality planning through the conformity process.