ARTBA American Road & Transportation Builders Association

TRANSPORTATION MAKES AMERICA WORK!

September 13, 2010

Air Docket
Environmental Protection Agency
Mail Code 2822T
1200 Pennsylvania Avenue
Washington, D.C. 20460
Attn: Docket ID Number EPA-HQ-OAR-2009-0128

Re: Transportation Conformity Rule Restructuring Amendments

On behalf of the 5,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the U.S. Environmental Protection Agency's (EPA) proposed transportation conformity rule restructuring amendments published in the August 13 *Federal Register*.

ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than $200 billion annually in U.S. economic activity and sustains more than 2.2 million American jobs.

ARTBA members undertake a variety of activities that could be directly impacted by EPA's proposed amendments to the transportation conformity rule. ARTBA's public sector members adopt, approve or fund transportation plans, programs or projects under Title 23 U.S.C. and Title 49 U.S.C. ARTBA's private sector members rely heavily on contracts funded under these titles to plan, design, construct and provide supplies for transportation improvement projects.

According to the August 13 *Federal* Register notice, EPA's proposed transportation conformity rule restructuring amendments attempt to "eliminate repetition and reduce the need to update the [transportation conformity] rule each time a National Ambient Air Quality Standard is promulgated." However, they do not address the underlying problems with transportation conformity as a whole. While ARTBA appreciates EPA's attempts to streamline the transportation conformity process to make it more efficient, ARTBA believes wholesale changes are needed.

The problem with the existing conformity process is caused by the fact that some have tried to turn these determinations into an exact science, when they are not. Rather, conformity findings are based on assumptions and "modeling of future events," not often reflecting reality. Very few conformity lapses occur because a region has a major clean air problem. They occur because

one of the parties involved cannot meet a particular deadline. Thus, the conformity process has become a top-heavy bureaucratic exercise that puts more emphasis on "crossing the t's and dotting the i's" than on engaging the public in true transportation planning that is good for the environment and the mobility of a region's population.

The problems with the Clean Air Act's (CAA's) conformity process are amplified by transportation plans and the State Implementation Plans (SIPs) with which they are intended to conform often being out of sync with one another. Largely, this is due to transportation plans having very long planning horizons requiring frequent updates, while most air quality plans have very short planning horizons and are updated infrequently. As a result, many of the planning assumptions used for conformity determinations of transportation plans and programs are not consistent with the assumptions used in the air quality planning process to establish emissions budgets and determine appropriate control measures. In other words, because transportation plans must use the most recent air quality data, a perceived increase in emissions and possible conformity lapses can occur simply because the numbers of models relied on in the transportation plan differ from those in the air quality plan—not because an area's air quality has changed.

Although not specifically mentioned in the proposed rule, ARTBA would also like to comment on the notion of project-specific, or "hot-spot" conformity analysis, which has surfaced in recent transportation conformity discussions. "Hot-spot" analysis ignores a fundamental truth—the building block for SIPs and conformity is at the county level. In urbanized areas, the key test is whether emissions from the long-range transportation plan or the TIP, *in their entirety*, stay within the emissions budget set in the SIP. In these cases, there is no project level conformity and appropriately so. The difference in emissions between build and no build alternatives is usually quite small. Therefore, the impact of any single project on those area-wide emissions totals is likely to be very slight, and could be positive or negative. Nevertheless, if these projects are part of a conforming long-range transportation plan and TIP, moving forward with them regardless of their air quality impact, would *not* compromise the legal commitment of the mobile sector to meet its SIP goals and achieve the attainment of air quality standards.

<u>It must also be emphasized the key to reducing mobile sector emissions has been and will continue to be cleaner fuels and cleaner cars.</u> In fact, today's average motor vehicle produces 80 to 90 percent less emissions than it did in 1967. Illustrating this point, major automobile manufacturers announced in 2005 a new generation of vehicles that will be 99 percent cleaner than vehicles produced 30 years ago. This reduction in emissions comes from a four-part strategy that includes cleaning up the fuel as it goes into the vehicle, burning the fuel more precisely in the engine, removing undesirable emissions with a catalyst, and monitoring all of these systems to ensure minimal emission levels.

Further, data from both EPA and the Federal Highway Administration (FHWA) show substantial progress towards mobile sector emissions reductions in a growing economy. According to both agencies, despite gains in GDP and VMT, the nation's air quality has improved. Specifically, between 1970 and 2002, the transportation sector has reduced volatile organic compounds (VOCs) by 73 percent, nitrous oxides (NOx) by 41 percent, particulate matter (PM) by 50 percent, and carbon monoxide (CO) by 62 percent.

In conclusion, ARTBA recommends the following changes to the transportation conformity process:

1) The air quality modeling process used in determining conformity levels needs to be reformed to utilize the most recent air quality data available, rather than prediction-based models. This would ensure conformity determinations are based on assumptions and "modeling of future events," not often reflecting reality.

2) Emissions budgets must have a built in level of flexibility (preferably a 10 to 15 percent cushion) for counties. This will prevent the conformity process from degrading into a "race for the courthouse door" every time a local or regional government experiences a momentary up-tick in emissions levels.

3) "Hot-spot," or project-level, conformity should be repealed. This practice provides a false picture of air quality levels by focusing on temporary emissions caused by specific transportation construction projects. Finished projects, however, often lead to an overall decline in emissions levels for the county in question.

ARTBA looks forward to working with EPA to achieve a cleaner environment through these and other future regulatory efforts.

Sincerely,

T. Peter Ruane
President & C.E.O