CLEAN AIR ACT TRANSPORTATION CONFORMITY PROVISIONS CONTAINED IN H.R. 3, "THE TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS"

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND AIR QUALITY

OF THE

COMMITTEE ON ENERGY AND COMMERCE

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CLEAN AIR ACT TRANSPORTATION CONFORMITY PROVISIONS CONTAINED IN H.R. 3, "THE TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS"

WEDNESDAY, MARCH 2, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON ENERGY AND AIR QUALITY,
Washington, DC.

The subcommittee met, pursuant to notice, at 3:20 p.m., in room 2123 of the Rayburn House Office Building, Hon. Ralph M. Hall (chairman) presiding.

Members present: Representatives Hall, Shimkus, Otter, Murphy, Burgess, Barton (ex officio), Boucher, Waxman, Green, Strickland, Capps, Solis, and Gonzalez.

Staff present: Mark Menezes, chief counsel for energy and environment; Margaret Caravelli, majority counsel; Peter Kielty, legislative clerk; and Michael Goo, minority counsel.

Mr. HALL. Okay. Thank you for your patience. The subcommittee will come to order now, and without objection, the subcommittee will proceed, pursuant to Committee Rule 4(e), which allows members the opportunity to defer opening statements for extra questioning time. I think they all understand that.

The Chair recognizes himself for an opening statement. Today, the subcommittee holds a hearing on the Clean Air Act provisions contained in the Transportation Equity Act, a Legacy for Users. These provisions, developed with our friends across the aisle, are designed to simplify the conformity process, while maintaining air quality benefits. I look forward to learning from the panel the transportation conformity process, and how the suggested changes to the conformity program will further the development of transportation projects consistent with our air quality goals.

I would like to welcome and thank our esteemed witnesses for joining us today. All of you have taken your very valuable time from your important responsibilities to help educate us here today, and several of you have traveled great distances. For your sacrifice and your time, we do thank you, and don't be dismayed about a lack of attendance here. We are about to have a vote, and several members have gone on to the floor, but they will be back. But if they do not come back, you have the two most important ones here now, in our opinion. But seriously, what you say will, of course, be taken down, put into the record, and all members will have copies

of it. And that is the basic reason for it, and then, we relate back to this testimony when we write the act, and take our actions.

Our witnesses today represent folks that are involved and are affected by the transportation conformity process itself. The Honorable Jeffrey Holmstead of the Environmental Protection Agency, and the Honorable Charles Nottingham of the Department of Transportation and Federal Highway Administration joins us as Federal partners in the conformity program. It is my understanding that we also have Mr. Njord, Executive Director of Utah Department of Transportation, with transportation problems himself today. We welcome you to this panel, and thank you for being with us.

I want to welcome those testifying on behalf of organizations representing planners, air quality officials, and road builders. These groups work together every day of the year to ensure the continued development of our Nation's transportation infrastructure, while protecting our air quality, and it is a pleasure to have you today.

A symbol of American freedom is being able to flat drive down the open road to any destination of one's choosing. It is just that simple. As this country has grown, so too have our roads and the number of vehicles on them. Will Rogers once said that the way to pay for all of our transportation costs was to require everybody's car to be paid for before they put it on the highway. That might have worked back in the 1930's, but I am not sure that that would work today. Recognizing that growth might place some burdens on the environment, particularly the air quality, the Clean Air Act established a process through which the Environmental Protection Agency and the Department of Transportation would work together to continue the expansion of our Nation's roads while protecting air quality, and that is the whole purpose.

I guess, however, the real purpose behind transportation conformity is to ensure that the area's transportation activities are balanced with the area's air quality goals. With billions of dollars spent each year on transportation projects, conformity serves as a check on this development. This check and balance ensures that projects not only serve to keep our Nation moving and our economy growing, but also protects our Nation's air quality. While recognizing the merits of the cooperative process established by the transportation conformity program between the metropolitan planning organizations and the State air quality officials in pursuit of a common goal, we worked with our minority to craft the revised transportation conformity language. The language reflects a spirited collaborative effort and hours of work. The proposed law increases the time for conformity determinations for transportation plans and State transportation improvement programs to 4 years. It is now 2 to 3, and this would increase it to 4, thus easing the burdens placed on transportation planners, and allowing for better coordinated demonstrations of conformity.

Also, additions or substitutions of transportation control measures used to control and reduce the emissions would no longer trigger a new conformity determination or revision of the applicable State implementation plan. The proposed reduction synchronizes the planning horizons for long term transportation plans with that of the State implementation plans. A key feature of this adjust-

ment in the planning horizon timeframe is that the Metropolitan Planning Organization and the air pollution control agency make the determination to implement a shorter time horizon. Under the proposed law, before the restrictions occur due to a conformity lapse, a 12 month grace period is permitted.

So I am gratified to see that this issue is one on which this committee can work together, and I again look forward to hearing from the conformity experts that are in front of us here, and I want to thank you for all of your time, and we welcome all of your views with respect to the current conformity process, and especially, your opinions on the proposed revisions to the conformity program. And at this time, I recognize the gentlelady, Ms. Capps, for her opening statement.

[The prepared statement of Hon. Ralph Hall follows:]

PREPARED STATEMENT OF HON. RALPH HALL, CHAIRMAN, SUBCOMMITTEE ON ENERGY AND AIR QUALITY

The Subcommittee will come to order. Without objection, the Subcommittee will proceed pursuant to Committee Rule 4(e), which allows Members the opportunity to defer opening statements for extra questioning time.

The Chair recognizes himself for an opening statement. Today, the Subcommittee holds a hearing on the Clean Air Act provisions contained in the Transportation Equity Act: A Legacy for Users. These provisions, developed with our friends across the aisle, are designed to simplify the conformity process while maintaining air quality benefits. I look forward to learning from the panel the ins and outs of the transportation conformity process and how the suggested changes to the conformity program established by the Clean Air Act will further the development of transportation plans, programs and projects consistent with air quality goals.

I would like to welcome and thank our esteemed witnesses for joining us today. Our witnesses represent folks involved in or impacted by the transportation conformity process. The Honorable Jeffrey Holmstead of the Environmental Protection Agency and the Honorable Charles Nottingham of the Department of Transportation, Federal Highway Administration join us as Federal partners in the conformity program.

I also want to welcome those testifying on behalf of organizations representing transportation planners, air quality officials, and road builders. These three groups work together each day to ensure the continued development of our nation's transportation infrastructure while protecting air quality. It is a pleasure to have you join us here today.

A symbol of American freedom is being able to drive down the open road to any destination of one's choosing or for that matter with no particular place to go. As this country has grown so to have our roads and the number of vehicles on those roads. Recognizing that this type of growth may place burdens on the environment, particularly air quality, the Clean Air Act established a process through which the Environmental Protection Agency and the Department of Transportation would work together to continue the expansion of the nation's roads while protecting air quality. The purpose behind transportation conformity is to ensure that an area's transportation activities are balanced with the area's air quality goals. With billions of dollars spent each year on transportation projects, conformity serves as a check on this development. This check and balance ensures that projects not only serve to keep our Nation moving but also keep our Nation's air quality in good stead. Taking a cue from the cooperative process established by the transportation conformity program bringing together metropolitan planning organizations with state air quality officials in pursuit of a common goal, we worked with our minority to craft the revised transportation conformity language.

I favor a practical policy of simplifying things so as to make the accomplishment of a goal more certain. To this end, in collaboration with our Democratic counterparts on the Committee, we drafted the provisions contained in H.R. 3 The Transportation Equity Act: A Legacy For Users, which we are here to discuss today. The language reflects a spirited collaborative effort and hours of work:

- The proposed law increases the time for conformity determinations for transportation plans and State transportation improvement programs to 4 years thus

easing the burdens placed on transportation planners, and allowing for better coordinated demonstrations of conformity;

- Additions or substitutions of transportation control measures, used to control and reduce emissions would not trigger a new conformity determination or revision of the applicable State Implementation Plan;
- The proposed reduction in planning horizons synchronizes the planning horizons for long term transportation plans with that of State implementation plans. A key feature of this adjustment in the planning horizon timeframe is that the Metropolitan Planning Organization and the air pollution control agency make the determination to implement a shorter time horizon; and
- Under the proposed law, before the consequences of a conformity lapse occur a 12-month grace period is permitted.

I am gratified to see that this issue is one in which this Committee can work together on. Again I look forward to hearing from the "conformity experts" and I want to thank you all for your time. We welcome all of your views with respect to the current conformity process and especially your opinions on the proposed revisions to the conformity program.

Ms. CAPPS. Thank you, Mr. Chairman, for holding this hearing to consider the Clean Air Act's conformity program, and your nostalgia about the wide open spaces of Texas, and I grew up in Montana, you know. We used to sing don't fence me in, right? I don't know. Those days are gone forever, right?

Mr. HALL. I agree.

Ms. CAPPS. All right. I had hoped, and thank you, witnesses, for being here today. I had hoped we would assert the committee's jurisdiction over the air quality section of the transportation bill. Clearly, this subject matter is one that falls within the jurisdiction of this committee, and is indeed worthy of examination, and I think we owe it to Chairman Barton and Dingell, Ranking Member Dingell's efforts to address some of the air quality issues contained in last session's Senate transportation bill. The House bill, I believe, strikes a better balance than S. 1072. While we have made great strides reducing air pollution since Congress enacted the Clean Air Act, much more remains to be done. When it comes to clean air, our priorities should be simple, to cut air pollution that is causing tens of thousands of premature deaths, creating heart and lung problems in senior citizens, and giving too many of our schoolchildren asthma.

And we must do it expeditiously. American families shouldn't have to wait any longer for clean air, clear air. As a public health nurse, I am very concerned about the impacts that increased traffic and air pollution will have on public health. With the House scheduled to reconsider transportation legislation as possibly as much as $300 billion in new transportation spending, a strong conformity program is needed now more than ever. The conformity program helps to ensure the Nation's transportation needs are satisfied without sacrificing our health and the air we breathe, and I think this can be done. Since its implementation, the conformity program has proven to be a key tool used by transportation and air planners to keep harmful air pollution in check. We should not eliminate this crucial program, and we should not allow transportation projects to go forward regardless of their impact on air quality and on public health.

California, where I am from now, suffers from some of the most serious air quality problems in the Nation. It is no surprise that as our population increases, the level of congestion on our highways and roads go up. For instance, in many parts of our State,

the total vehicle-miles traveled each day has grown much faster than the rate of population growth. The conformity program recognizes that States like California will face serious challenges in the area of air quality and transportation planning. Without careful forecasting, these demands could overwhelm our ability to keep our air clean.

As we consider changes to the Clean Air Act, we must ensure transportation choices contribute rather than undermine achieving healthful air quality. Finally, although today's hearing is not about this, I hope the committee will seek ways to enhance our Nation's air quality also by promoting more options to fight congestion through transit, through passenger and freight rail, smarter development, better land use planning, and other strategies. By providing better resources to States and local communities, we will ensure a healthy and safe environment for us all. Thank you, and I look forward to yielding—to the testimony of our witnesses, and yield back the balance of time.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. CHARLIE NORWOOD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Thank you, Mr. Chairman.

During my tenure in Congress I've been a consistent supporter of commonsense environmental policies that will ensure clean air and water. However, striking the balance between necessary urban developments and maintaining acceptable air quality is something we urgently need to find.

Take a city that is busting out at the seams, like Atlanta. Expanding the cities roadways is absolutely vital to the residents there. They can not afford to wait six months during a "conformity lapse" to finish a major artery of the city.

We must find this balance and that is why I am so pleased the distinguished Chairman has decided to hold this hearing today. I am looking forward to our witnesses' testimony and guidance. I yield back.

PREPARED STATEMENT OF HON. C.L. "BUTCH" OTTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. Chairman, I appreciate the opportunity to sit down today and discuss the steps necessary to jump-start critical highway improvement projects throughout our country. Our current highway planning process has been weighed down by excessive environmental and ESA restrictions. The length of time needed to acquire a series of permits, both state and federal, before construction can begin needlessly delays the much-needed improvements to our highway system.

Our nation's economy depends on an efficient and affordable transportation system to move people and products across the country and around the world, and these unnecessary delays harm much more than a few miles of road. In Idaho alone $58 million in highway projects is currently tied up in bureaucracy. That is money that has already been appropriated, spent by the government with the intention of maintaining and improving roads throughout my state. Instead it is sitting unused, waiting for some bureaucrat to sign a paper while Idaho's roads continue to deteriorate.

The highway bill that we will consider on the floor in the coming weeks is critical. Investing in our nation's roads and transit systems is wise not only for the present but also for the future, and a meaningful authorization bill would provide for economic development, job creation, and safety improvements on our Federal Highway System. This is why I support the provisions we have gathered here to discuss.

However, I am concerned that they merely scratch the surface, when what we need is serious reform to address the flaws in the environmental and historical permitting process. No amount of money passed by Congress in an authorization or appropriation bill benefits the citizens of this country if it gets tied up for years in needless bureaucracy. It is crucial that as we address this bill this year we take the steps necessary to see that highway money actually turns into pavement.

Thank you.

PREPARED STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, I would like to thank you for holding this important hearing.

My Congressional District, like those of Chairmen Barton and Hall, is located in the Dallas-Fort Worth Metroplex in North Texas. I believe that one of the North Texas region's most important and challenging issues over the next decade will be how best to clean up the air that we breathe.

There is a significant commitment to clean the air from all the stakeholders in the Dallas-Fort Worth area. This includes the EPA, the State of Texas, the Cities of Fort Worth and Dallas, and the North Texas Clean Air Coalition, which is comprised of the North Texas Council of Governments and community leaders. It is important to note that North Texas has grown rapidly over the last decade and the degree of air pollution has not increased.

I support efforts to clean up our air—I believe that it is one of the most important legacies that we can leave our children. As a former member of the Transportation and Infrastructure Committee, however, I am concerned about the transportation conformity provision in current law. I do not believe that taking away transportation funding from the Dallas-Fort Worth region will result in improved air quality.

In fact, I believe eroding our transportation funding would adversely affect air quality because studies have shown that automobiles operate more efficiently at around 60 miles per hour than at lower speeds such as those cars idling during bumper-to-bumper traffic in bottleneck areas, such as on Interstate 35 East in my district. A more efficient motor decreases the amount of ozone-creating pollutants that are released into the air. This is especially important to the Dallas-Fort Worth region because EPA studies have shown that our region's air quality is especially affected by mobile-source (automobile) pollution.

I am looking forward to hearing from our witnesses this afternoon about how this year's Highway Reauthorization bill will address the subject of Transportation Conformity.

I yield back.

PREPARED STATEMENT OF HON. JOE BARTON, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Thank you, Mr. Chairman. The issue of transportation conformity represents the intersection between development and environmental protection. Protection of the nation's air quality while not hindering the continued development and expansion of this Nation's transportation system is an attainable goal. I applaud any enhancements that look to make a process run more efficiently and with more success.

The provisions we are examining today clearly move the ball forward in terms of aiding states and localities by providing them more time to plan thus enabling them to keep their transportation programs intact and on schedule. This prevents billions of dollars of funding from being tied up when the goal is continued transportation development while protecting air quality.

I would like to take a moment to focus on the fact that the Clean Air Act transportation conformity provisions contained in the current transportation bill, H.R. 3, remain the same as those in H.R. 3550, from the prior Congress. In the 108th Congress we worked successfully with our friends across the aisle on crafting these provisions. This spirit of bi-partisan cooperation on this issue continues into the 109th Congress. It is my sincere hope that this example reflects a renewed commitment to work together on various issues, including energy legislation.

For a subcommittee that has much work in front of it on energy and air quality issues, it bodes well that on such a complex issue, as transportation conformity, we can work together to come to a positive resolution. It is my hope and preference that a positive dialogue, continue with our friends on the other side of the aisle, as the Committee moves forward in this legislative session.

I thank the Chairman for having this hearing and look forward to the testimony. I yield back the balance of my time.

Mr. HALL. Thank you. On our first panel, we have the Honorable Jeffrey R. Holmstead, Assistant Administrator for Air and Radiation, Environmental Protection Agency, in charge, I understand, of all activities at EPA's Office of Air and Radiation, associate counsel to our President, with a long record of environmental serv-

ice and knowledge, and we thank you for bringing that knowledge to us.

We have Charles D. Nottingham, Associate Administrator for Policy, Department of Transportation, Federal Highway Administration, who has previously served as counsel to the U.S. House of Representatives, so he has been with us from time to time.

And we have, sitting behind Mr. Nottingham, recognize a man that has given great service to State, country, and Nation, James Shrouds, who is Director of the Federal Highway Administration, Office of Natural and Human Environment. Mr. Shrouds is scheduled to retire this week from Federal service, after a very illustrious 40 year career at the FHWA. During his long career, Mr. Shrouds frequently provided technical assistance to the Energy and Commerce Committee, and to other Congressional committees, is lauded. Mr. Shrouds is esteemed throughout the transportation and air quality community as a leading expert on air quality conformity for highways. The committee wishes to recognize his contribution and express our appreciation to an exemplary and dedicated public servant. We are honored to have you here.

Now, and I recognize, on this panel, also, Mr. Njord, who is Executive Director of the Utah Department of Transportation, responsible for transportation planning for the 2002 Olympic Winter Games. He is very versatile. He is a past President of the American Association of State Highway and Transportation Officials. We thank you three, and if you will be patient with us once again, we have some votes going on over there, and I am going to go over and try to be back within 15 minutes.

And without objection, Mr. Njord will join the first panel.

I am going to vote, and I will be back. Thank you. We used to have a sign on our abstractor's door there, back in the 1930's, when they just couldn't afford to miss a sale, and if he would go across the street to get coffee, it would say going for coffee, be back in 5 minutes, been gone 3. So that is what I am telling you right now. The Chair recognizes Mr. Boucher, the gentleman from Virginia, for an opening statement.

Mr. BOUCHER. Mr. Chairman, I—in view of the time that we have, and the number of witnesses that we have today, will simply submit mine for the record, and I think it would be appropriate at this time to go on with our testimony.

[The prepared statement of Hon. Rick Boucher follows:]

PREPARED STATEMENT OF HON. RICK BOUCHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Thank you, Mr. Chairman. I commend you, for the bipartisan work which has been performed in drafting these Clean Air Act Amendments and for appropriately exercising this Committee's jurisdiction by holding today's hearing on the issues contained in the transportation legislation which fall within the scope of our authority.

Today we will hear from a variety of witnesses with expertise in both air quality and transportation planning who will address the current Clean Air Act conformity requirements as they relate to transportation planning and suggest specific changes which could improve the process.

Under the Clean Air Act, regions that have not attained one or more of the six National Ambient Air Quality Standards must develop a State Implementation Plan outlining how they will bring the area into attainment. Section 176 of the Clean Air Act prohibits federal agencies from funding projects in these areas unless the

projects conform to the SIP. In other words, projects must not affect air quality in the region in a manner which would delay attainment of the air standards.

Because new road projects lead to an increase in vehicle miles traveled and therefore to increased emissions in an area, the Act requires that a non-attainment area's Transportation Improvement Plan show that the planned transportation projects in an area will conform to the SIP. If the TIP does not show conformity, the projects in question are deemed ineligible for federal funding and there is a lapse in the area until conformity of the plans is achieved.

The process associated with proving conformity under Section 176 of the Clean Air Act is complicated and involves the coordination of many planning activities such as the SIP, TIP and long range transportation planning. Many have raised concerns that the differing time lines associated with the development of various plans leads to a process that is less coordinated than it could be resulting in lapses of conformity. Others have argued that the process is working and that any changes could be detrimental to a region's air quality. The provisions contained in H.R. 3 represent a compromise which would alter the current process to allow for less frequent demonstrations of conformity, the ability to shorten the planning horizon and provide for a 12 month grace period before a lapse would be declared.

Specifically, H.R. 3 would change the frequency of conformity determinations for both the TIP and the long range Regional Transportation Plan to once every four years as opposed to the two year and three year respective cycles under current law. The proposed legislation would also alter the period of time for which conformity must be demonstrated. Under current law, conformity must be shown for a minimum of 20 years. H.R. 3 would allow an area to reduce this time horizon to 10 years with the agreement of the relevant air quality agency and the Metropolitan Planning Organization. H.R. 3 would additionally allow substitutions of "Transportation Control Measures" in a SIP without revisiting the SIP approval process or making a new conformity determination provided that the new measures achieve an equal or greater emissions reduction. Finally, the measure would add a new one-year grace period in the event of a conformity lapse, allowing a 12 month period in which to demonstrate conformity before federal funding is frozen.

I am interested in hearing from the witnesses a summary of their experiences with the transportation conformity requirements, whether changes to the process are needed and if so what changes would best meet the dual goals of improving both transportation infrastructure and air quality.

Thank you, Mr. Chairman.

Mr. HALL. As usual, you are very generous. Thank you very much. All right. Mr. Nottingham, the Chair recognizes you for, hopefully, 5 minutes, but with your kind patience, and your demand on your time, we will grant you the time that is actually needed. And thank you, sir.

Mr. NOTTINGHAM. Thank you, Chairman Hall, and members of the committee. Thank you for this opportunity to discuss transportation and air quality. I do ask that my written statement be made part of the record.

Mr. HALL. Without objection.

STATEMENTS OF HON. CHARLES D. NOTTINGHAM, ASSOCIATE ADMINISTRATOR FOR POLICY, DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION; HON. JEFFREY R. HOLMSTEAD, ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION, ENVIRONMENTAL PROTECTION AGENCY; AND JOHN R. NJORD, EXECUTIVE DIRECTOR, UTAH DEPARTMENT OF TRANSPORTATION, ON BEHALF OF AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS

Mr. NOTTINGHAM. Thank you. With me, as you noted, Mr. Chairman, earlier, in the front row behind me, is Jim Shrouds, the Director of the Federal Highway Administration's Office of Natural and Human Environment. Meeting the dual challenges of highway traffic congestion relief and air quality improvement is a high pri-

ority for the Department of Transportation, as I know it is for the members of this committee. Secretary Mineta has noted that one of the core principles of the Department's reauthorization proposal is to ensure an efficient infrastructure, while retaining environmental protections that enhance our quality of life.

Over the last 30 years, we have made remarkable progress in reducing air pollution, especially from transportation sources, and accomplished this during a period of significant growth in population, gross domestic product, and vehicle miles traveled. Reauthorization of the surface transportation programs presents a unique opportunity to continue progress in air quality improvement, and at the same time, make gains in reducing congestion. New conformity provisions should provide flexibility, streamline the conformity process, but ensure that air quality improvement continues.

A failure to meet a conformity determination deadline is referred to as a conformity lapse, and during a lapse, use of Federal-aid highway and transit funds may be restricted to certain types of projects, such as highway safety projects. The administration's conformity proposals would help address concerns that lack of synchronization in the transportation and air quality planning processes can contribute to lapses in conformity. While transportation plans have very long planning horizons, and are updated frequently, most air quality plans have very short planning horizons, and are updated less frequently.

The administration has proposed to better align the transportation and air quality planning horizons, and update cycles for transportation conformity, to better integrate the planning processes. Although the administration proposes limiting the conformity analysis timeframe to a minimum of 10 years, the provision would also require a regional emissions analysis for the last year of the transportation plan, which covers at least a 20-year period. However, the emissions analysis would be for informational purposes only. We continue to recommend including these provisions in the next reauthorization act. H.R. 3 reintroduces the same conformity provisions contained in H.R. 3550 from the 108th Congress, and the administration expressed its position on a number of these proposals last year in a letter to the conferees.

For example, the administration has objected to the 12 month grace period for demonstrating conformity in the House bill. Instead, we support lengthening the transportation and air quality update cycles to 5 years, which would better align with the time periods required in other Clean Air Act regulatory requirements. Current law requires conformity updates every 3 years, while H.R. 3 proposes a 4 year cycle with a 12 month grace period before lapse. We believe that our proposed 5 year cycle will be easier to implement.

In conclusion, I want to assure you that the FHWA is committed to continue the progress we have made in reducing motor vehicle emissions, and strongly supports the goals of the Clean Air Act's transportation conformity provisions. We are proud of the successes that have been achieved through flexible funding for innovative transportation projects that improve air quality, and through improved cooperation between transportation and air quality agencies. However, continued progress will require improved coordina-

tion of the transportation and the air quality planning processes. We believe that enactment of the administration's conformity proposals will provide the tools for better coordination, and will do much to help States achieve their transportation and air quality goals.

Mr. Chairman and members of the committee, this concludes my statement. I look forward to working with you for reauthorization of the surface transportation programs, and I will be pleased to answer any questions you may have.

[The prepared statement of Charles D. Nottingham follows:]

PREPARED STATEMENT OF CHARLES D. NOTTINGHAM, ASSOCIATE ADMINISTRATOR FOR POLICY, FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION

Mr. Chairman and Members of the Subcommittee, thank you for this opportunity to discuss transportation conformity.

Meeting the dual challenges of congestion relief and air quality improvement is a high priority for all of us at the Department of Transportation, as I know it is for members of this Committee. In the Transportation Equity Act for the 21st Century (TEA-21), you gave us new tools and authorities to assist us in achieving this goal, and we are proud of the progress that has been made. In reauthorization, the Department wants to continue to build upon the successes of TEA-21 and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Five key performance goals, including the protection of the human and natural environment, form the basis for the President's FY 2006 budget request. Under Secretary Mineta's leadership, these goals will help us develop a safer, simpler, and smarter national transportation system for a strong America.

The Department has articulated a set of core principles and values that have guided development of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA), the President's proposal for surface transportation reauthorization, introduced in the 108th Congress on May 15, 2003, as H.R. 2088. We plan to build on the successes and lessons of TEA-21. We seek to enhance the safety and security of all Americans, even as we increase their mobility, reduce congestion, and grow the economy. We want to ensure an efficient infrastructure while retaining environmental protections that enhance our quality of life.

In my testimony today, I will address two main points. First, I want to assure you that progress has been made in reducing transportation-related emissions of air pollutants, and that the Department of Transportation is committed to doing its part to ensure progress continues. Second, I want to restate the commitment of the Department to work with our transportation planning and air quality planning partners for effective coordination of the transportation and air quality planning processes.

CONTINUED FOCUS ON AIR QUALITY IMPROVEMENTS

As a Nation, we have made remarkable improvements in reducing air pollution, especially pollution that comes from transportation sources. Where transportation is a significant source of pollutants, the Environmental Protection Agency (EPA) reports that ozone (formed by the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NOx)), carbon monoxide (CO), and particulate matter (PM), have all decreased substantially since 1970. A majority of the areas designated as nonattainment since 1990 now meet national air quality standards. Air quality monitoring data through 2003 shows that all of the original carbon monoxide nonattainment areas, and 66 out of 87 previously-designated coarse particulate matter (PM-10) nonattainment areas no longer show air pollution levels that exceed the national ambient air quality standards. In addition, considering the recently implemented 8-hour ozone and PM-2.5 standards, ozone levels nationwide are down 9% from 1990, and PM-2.5 concentrations have decreased 10% since 1999. And, while the Clean Air Act (CAA) has led to reduced pollutant emissions from all air pollution sources, the greatest success can be found in the reduction of motor vehicle emissions: CO emissions have been reduced by 62 percent since 1970, PM-10 emissions reduced by 50 percent, NOx emissions by 41 percent, and VOC emissions by 73 percent from motor vehicles (see Attachment). In 1970, motor vehicles contributed 69 percent of total emissions of carbon monoxide, NOx, VOCs, and PM-10. However, by 2002, the motor vehicle portion of emissions of these pollutants dropped to 43 percent. Most of these

emissions reductions have resulted from stricter emissions standards, improved engine technology, and cleaner fuels. (The data cited in this paragraph can be found at the following websites: http://www.epa.gov/ttn/chief/trends/ and http://www.epa.gov/ttn/chief/trends/trends02/trendsreportallpollutants010505.xls.)

It is especially important to note that these reductions in emissions were accomplished during a period of 41 percent increase in population, 167 percent growth in gross domestic product (GDP), and 157 percent increase in vehicle miles traveled. The automotive, fuels, highway, and transit communities have managed to achieve this success in improving air quality while at the same time working to address increasing demands to improve mobility.

The downward trend achieved in emissions is expected to continue into the future. Engines and fuels are to become even cleaner under recent EPA-issued regulations for emissions standards and cleaner fuel requirements. Between 2004 and 2007, more protective tailpipe emissions standards will be phased in for all passenger vehicles, including SUVs, minivans, vans, and pick-up trucks. This regulation marks the first time that larger SUVs and other light-duty trucks will be subject to the same national pollution standards as cars. In addition, the EPA tightened standards for sulfur in gasoline, which will ensure the effectiveness of low-emission control technologies in vehicles and reduce harmful air pollution. When the new tailpipe and sulfur standards are implemented, Americans will benefit from the clean-air equivalent of removing 164 million cars from the road. These new standards require all passenger vehicles sold after the phase-in period to be 77 to 95 percent cleaner than those on the road today, and will reduce the sulfur content of gasoline by up to 90 percent.

We expect that motor vehicle emissions will be reduced as new heavy-duty vehicles that meet the 2004 emissions standards for heavy-duty engines enter the fleet. Beginning with the 2007 model, heavy-duty engines for trucks and buses must meet even tighter emissions standards, and the level of sulfur in diesel fuel must be reduced by 97 percent from existing standards by mid-2006. As a result, after a phase-in period, each new truck and bus will be more than 90 percent cleaner than the models made before the 2004 standards were in effect. In addition to tighter standards, the Federal Transit Administration (FTA) has been working with industry to develop and demonstrate low- and zero-emissions advanced propulsion technologies for transit buses, including hybrid-electric, battery electric, and fuel cell-powered buses. Under FTA/DOT leadership, a national program is underway to accelerate the development and commercial viability of these advanced technologies.

However, the Nation as a whole, and the transportation community in particular, face additional challenges as new air quality standards are implemented. The new eight-hour ozone and fine particulate (PM-2.5) standards are more stringent, and many areas across the eastern U.S. and in California have been designated nonattainment under these standards. Some of these areas, including small urban and rural areas, were designated nonattainment for the first time. Other existing nonattainment areas become larger and involve more jurisdictions under the new standards. The Department and EPA are working with these areas to increase their capacity to deal with new nonattainment designations.

THE TRANSPORTATION CONFORMITY PROCESS: COORDINATING TRANSPORTATION AND AIR QUALITY PLANNING

Conformity refers to a requirement of the CAA that is designed to ensure that Federally-funded or Federally-approved highway and transit projects conform to the air quality goals and priorities established in a State's implementation plan (SIP). For programs administered by the Federal Highway Administration and the Federal Transit Administration, we determine whether highway and transit projects conform to a State's SIP by comparing the total expected air quality emissions from the whole transportation system within the nonattainment or maintenance area, including the expected emissions that would result from projects contained in the transportation plan and transportation improvement program (TIP), with the emissions budget for motor vehicles in the SIP.

A failure or inability to make a conformity determination by the required deadline is referred to as a "conformity lapse." During a conformity lapse, the use of Federal-aid highway and transit funds may be restricted. Currently, most areas of the country are in conformity. But, as of March 1, 2005, six areas are in a conformity lapse.

Fulfilling the transportation conformity requirements has created stronger institutional links between two sets of agencies—transportation and air quality—that operated quite independently of each other prior to enactment of the Clean Air Act Amendments of 1990 (CAAA). This interagency consultation has played a crucial role in the development of more realistic and achievable transportation and air qual-

ity plans. In addition, the transportation conformity provisions have been instrumental in fostering improvements to the travel demand and emissions modeling processes, because of the specificity of data necessary to meet conformity requirements.

We now have more than a decade of experience in implementing the transportation conformity provisions of the CAAA and, despite successes, our stakeholders indicate that there remain opportunities to improve the transportation conformity process. Transportation conformity was intended to form strong linkages between the transportation and air quality planning processes. However, there is a concern among transportation agencies—and even some air quality agencies—that transportation plans and SIPs are not synchronized with one another due to different planning horizons and update frequencies. While transportation plans have very long planning horizons and have to be updated frequently, most air quality plans have comparatively shorter planning horizons and are updated less frequently.

TEA-21 and the CAA require that transportation plans must cover at least 20 years and be found conforming for that entire time period. However, air quality plans have much shorter planning horizons, often only 5-10 years, resulting in a "mismatch" in which transportation plans must consider emissions controls in the absence of comprehensive air quality planning. Without comprehensive air quality planning, there is no analysis of the most cost-effective emissions controls across all sources beyond the end of the SIP timeframe. If a metropolitan planning organization (MPO) has a conformity problem in the time frame beyond that covered by the SIP, it has limited options for achieving substantive emissions reductions with programs over which the transportation agencies have control. Traditional transportation control measures (TCMs) have little impact on regional emissions levels, and such strategies will provide even fewer reductions in the future, as technology continues to reduce total mobile source emissions. MPOs and State air agencies must work together during the SIP development and transportation conformity processes to ensure that both air quality and transportation needs are addressed. Although MPOs bear the responsibility of assuring that plans conform to air quality budgets, they do not have the authority under current law to establish more effective measures, like vehicle inspection and maintenance programs or reformulated fuels. That process of identifying future control strategies is the intended purpose of the SIP.

This "mismatch" can be further aggravated by differences in the frequency with which transportation plans and air quality plans are updated. Conformity determinations for transportation plans must be made at least every three years, must be based on the latest demographic and travel information, and must use the latest emissions estimation model. However, air quality plans are not updated on a regular cycle, and may reflect out-of-date assumptions or may have been developed using an outdated emissions estimation model. When a conformity analysis is performed in such a situation, it is impossible to determine whether the emissions associated with the transportation plan are truly consistent with the emissions budget in the air quality plan. This may be because the transportation plan emissions were estimated using one set of assumptions and model, while the emissions budget was developed under another. Our stakeholders have reported that such situations have occurred and are likely to happen again with recent and expected future releases of a new or updated emissions estimation models.

EPA, in coordination with the Department of Transportation, allows a grace period before States have to use a new emission model for conformity. EPA also requires that SIPs that are started after the official release use the new model. While the Clean Air Act does not require SIP updates in all cases, EPA guidance encourages States to evaluate the effects of a new model early to plan for any needed SIP updates to accommodate change.

Our stakeholders indicate that conformity lapses have occurred because areas could not complete the complex, comprehensive transportation planning and conformity processes within the required time frames, even though they met their emissions budgets. Data collection, model development, public outreach, and consensus building can all take a considerable amount of time and resources. MPOs also face other daily challenges of ever-increasing congestion, transportation needs due to economic growth, protection of water quality and other environmental resources, efficient freight management, safety, and security.

Many of our stakeholders have suggested bringing the planning horizons and frequency of updates of both the transportation plans and air quality plans much closer together. Some have suggested a shorter planning horizon, and less frequent updates, while others have suggested a longer air quality planning horizon. We note that some areas have opted to voluntarily extend their air quality planning horizons.

In any case, some stakeholders have suggested it is in the best interests of an effective, integrated process that the air quality plans and the transportation plans are both using the latest, and most consistent, set of planning assumptions, and that the air quality plans include the necessary control measures to ensure timely attainment of the standards. Stakeholders have stated that this would also help anticipate air quality problems and correct them in a more proactive and coordinated transportation and air quality planning process.

TRANSPORTATION CONFORMITY PROVISIONS IN SAFETEA

Over the years, the Department has worked closely with EPA and State and local stakeholders to improve the transportation conformity process, and we are committed to continuing to improve coordination of the transportation and air quality planning processes. We worked with EPA and transportation stakeholders to identify and develop the conformity proposals in SAFETEA, and we believe that enactment of the following provisions would contribute significantly to process improvements.

1. *SAFETEA would combine metropolitan long-range transportation plans and transportation improvement programs into a single transportation plan.* A primary objective is to ensure better consistency between what has been known as the metropolitan long-range transportation plan and the identification/prioritization of specific transportation projects/project phases into what has been known as the TIP. Since current law requires the TIP to be consistent with the long-range transportation plan, the rationale behind this proposed change is to reduce the number of actions or products generated by the metropolitan transportation planning process such as those related to plan/program development or revision, public involvement, fiscal constraint. This will require only one conformity determination for the plan, instead of separate conformity determinations for transportation plans and TIPs.

2. *SAFETEA would limit transportation conformity to the first ten years of the transportation plan, the latest year in which the SIP contains a motor vehicle emissions budget, or the completion date of a regionally significant project, if the project requires approval before the subsequent conformity determination, whichever is longer.* In practice, this means that for areas with SIP planning horizons of less than 10 years (which is the case for most areas), transportation conformity determinations would cover a minimum of 10 years. In cases where air quality agencies develop a longer-term SIP with emissions budgets that extend beyond 10 years, the conformity determination would cover the corresponding, longer time period. This provision would be added to better integrate the transportation planning and air quality planning processes, and to ensure that the most cost-effective mitigation strategies are incorporated into these processes. This proposal would more closely align the transportation and air quality planning horizons for purposes of transportation conformity. Currently, transportation conformity must be determined for the entire 20-year planning horizon of metropolitan long-range transportation plans. On the other hand, air quality SIPs usually cover a much shorter time frame (10 years or less). Nevertheless, long-range transportation plans must conform to these SIPs for the full 20 years of the plan. This mismatch in timeframes does not provide for an integrated planning process in the out-years to select the most cost-effective strategies for controlling emissions, nor does it allow for the consideration of emissions reduction strategies across different sources of emissions.

3. *SAFETEA would require a regional emissions analysis for the last year of the transportation plan, for informational purposes only.* SAFETEA includes a proposal for regional emissions analysis to be performed for the last year of the metropolitan Transportation Plan, assuming the conformity analysis is not performed for the entirety of the Transportation Plan. These analyses are intended to be informational only and serve as input into future updates of the air quality SIP or the Transportation Plan. If the analysis indicates that there are potential long-term air quality issues, such issues could be more effectively addressed through an integrated transportation and air quality planning process and future updates of the air quality SIP and/or metropolitan Transportation Plan.

4. *SAFETEA would revise the required frequency of transportation plan updates and conformity determinations from three to five years, except when the MPO chooses to update the plan more frequently or changes to the SIP trigger a new conformity determination as provided for in the conformity rule.* The Administration's proposed legislation would encourage (and provide sufficient time to develop) comprehensive Transportation Plans that consider a diverse array of issues, while giving the MPOs and State DOTs discretion in updating Transportation Plans more frequently than the proposed five-year timeframe, if dictated by changing regional or State issues. Any major change to the transportation plan within the 5-year update cycle, how-

ever, would result in a new conformity determination. In addition, SAFETEA would retain the 18-month conformity "triggers" of the current transportation conformity rule associated with SIP actions, i.e., a conformity determination on the transportation plan is required if a related SIP action occurs. Together these factors would ensure that transportation plans remain in conformity with air quality plans, thereby not compromising air quality goals.

CONCLUSION

In conclusion, the Department of Transportation is committed to continuing the progress made over the last thirty-five years in reducing motor vehicle emissions and strongly supports the goals of the Clean Air Act's transportation conformity provisions. Improving transportation safety and mobility, while protecting the environment and enhancing the quality of life for all of our communities, are compatible goals. The Department is proud of the successes that have been achieved through flexible funding for innovative transportation projects that improve air quality and through improved cooperation between transportation and air quality agencies. However, we also recognize that additional improvement in the coordination of transportation and air quality planning processes can be achieved.

We believe that the Administration's SAFETEA conformity proposals would lead to better integrating transportation and environmental decision-making and would effectively advance environmental stewardship while improving our efficiency in meeting our nation's mobility needs.

The American public demands and deserves both mobility and clean air, and we must remain focused on providing the highest level of service and environmental protection that we can provide.

Mr. Chairman and members of the Subcommittee, this concludes my statement. I again thank you for the opportunity to testify today and I look forward to working with you for reauthorization of the surface transportation programs.

I will be pleased to answer any questions you may have.

Mr. HALL. And for which we thank you, and Mr. Holmstead, recognize you, sir.

Mr. HOLMSTEAD. Thank you, Mr. Chairman. It is a pleasure to be here this afternoon. With your permission, I would like to submit my written statement for the record.

Mr. HALL. Without objection.

STATEMENT OF HON. JEFFREY R. HOLMSTEAD

Mr. HOLMSTEAD. And make a very brief oral statement, in light of the time that we have.

Over the last 30 years, we have made amazing progress in reducing pollution from cars and trucks and buses. Within the next year or 2, any car or truck or—any car or SUV or truck that we buy is going to be about 99 percent cleaner than it was in 1970, and within a few years after that, all diesel engines will be about 95 percent cleaner than they are today. It really is remarkable what technology has done to improve our air quality, and especially, the transportation-related air quality.

Notwithstanding these improvements, there is still more that we need to do in terms of coordinating transportation plans and air quality planning, and that is really what conformity is all about. The administration has already taken a number of steps administratively to try to make this program work better. We think it is important to continue to have better relationships between the air quality planners and the transportation planners. We think we have come a long way over the last 13 years, but we recognize that there is more that we can do. Mr. Nottingham mentioned several of the things that the administration has been working, and put in its own bill, and we look forward to working with the committee to make sure that we can continue to achieve the dual goals of hav-

ing an effective transportation infrastructure, while at the same time, protecting our air quality.

Thank you, and I, too, would be happy to answer any questions you may have.

[The prepared statement of Jeffrey R. Holmstead follows:]

PREPARED STATEMENT OF JEFFREY HOLMSTEAD, ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, U.S. ENVIRONMENTAL PROTECTION AGENCY

Thank you, Mr. Chairman and Members of the Subcommittee, for the opportunity to appear here today to discuss the transportation conformity program in the context of reauthorization of the nation's surface transportation law, currently known as the Transportation Equity Act for the 21st Century (or TEA-21).

There has been considerable progress in achieving better air quality for Americans over the past 30 years. Building upon these air quality successes remains an important national priority. EPA sees the reauthorization of TEA-21 as an opportunity to employ available tools to improve air quality in ways that could help cities across the country make progress toward attaining the national air quality standards, including the recently implemented new ozone and particulate matter standards.

According to EPA's latest air quality trends report, air quality monitoring data show that from 1970-2003, concentrations of all six criteria pollutants have declined, including the four criteria pollutants that are most affected by the transportation sector: carbon monoxide, nitrogen dioxide, ozone (smog), and particulate matter soot.

These air quality data are good news, and are attributable to the transportation and air quality programs currently in place. However, there is still more work that needs to be done. Currently, there are approximately 160 million Americans living in 474 counties that are designated nonattainment for the new 8-hour ozone air quality standard, and 95 million people living in 225 counties that are designated nonattainment for the new standard for fine particulate matter (or $PM_{2.5}$). The criteria pollutant emissions have a significant impact on the health of Americans. Particulate matter is linked to aggravation of pre-existing respiratory ailments, reductions in lung capacity, and a significant number of premature deaths. Ozone can impair lung function, cause chest pain and coughing, and worsen respiratory diseases and asthma. Carbon monoxide can aggravate angina (heart pain).

Even though overall emissions have been reduced, on-road mobile sources continue to be a significant contributor to pollution problems. EPA estimates that in 2003, motor vehicles accounted for 55 percent of total U.S. carbon monoxide emissions, 28 percent of total volatile organic compounds (VOCs; an ozone precursor), 36 percent of total nitrogen oxides (NO_X; an ozone precursor), and 5 percent of the traditionally inventoried direct emissions of particulate matter nationwide.

As these data suggest, the integration of transportation and air quality planning is imperative to achieving clean air. One of the most valuable tools that currently exists to ensure the integration of these two distinct and different planning processes is transportation conformity. Transportation conformity was established by Congress in the Clean Air Act Amendments of 1977 and strengthened in the 1990 amendments. The purpose of transportation conformity is to ensure that transportation activities within a region are compatible with the region's clean air goals. Transportation conformity applies only in areas that have air quality worse than the national standards (nonattainment areas) or that have violated the standards in the past (maintenance areas). In the simplest terms, conformity serves as an "accounting check" to ensure that emissions from a nonattainment or maintenance area's future transportation network fit within the emissions budget included in the area's air pollution reduction plan.

A benefit of conformity accounting is that it requires state and local governments, and the public, to consider the air quality impacts of the planned transportation system as a whole, before transportation plans are adopted and projects are built. Billions of dollars every year are spent on developing and maintaining our transportation system. Conformity helps ensure that these dollars are not spent in a manner that would worsen air quality.

Prior to the 1990 Clean Air Act, transportation planners and air quality planners often did not consult with one another or even use consistent information regarding future estimates of growth. To address these problems, the 1990 Amendments explicitly linked the air quality planning and transportation planning processes in a manner that had not previously existed. Transportation conformity has compelled the two types of planning agencies to work together through an interagency consultation process to find creative and workable solutions to air quality issues. This

increased consultation is an important benefit. A 1999 Harvard study on the program, which was jointly funded by DOT and EPA, confirmed that the program has improved consultation between transportation and air quality planners, and made that consultation more effective.

While conformity has proven to have certain benefits, some nonattainment and maintenance areas, particularly those that have been recently designated nonattainment for the new ozone and $PM_{2.5}$ standards, may face challenges in meeting the program's requirements. The best way EPA can help areas meet conformity is through Federal programs to improve air quality. We are currently implementing three Federal regulatory programs that will achieve dramatic emission reductions from cars, trucks and nonroad equipment across the country.

First, in 2004, car manufacturers began producing cars and light trucks that meet EPA's new, stringent tailpipe standards. These requirements are enabled by EPA's Tier 2 program with low sulfur gasoline standards that ensure the effectiveness of emission control technologies in all passenger vehicles. Together, these programs will make passenger vehicles 77 to 95% cleaner. In addition, Tier 2 requires for the first time that sport utility vehicles, pick-up trucks, and minivans meet the same standards as cars. Second, EPA's landmark Clean Air Highway Diesel Program will make heavy duty trucks and buses up to 95% cleaner than today's models. This rule also requires the production of low sulfur diesel fuel to enable the use of advanced after treatment technologies. Finally, EPA's Clean Air Nonroad Diesel Program will achieve reductions of a similar magnitude from non-road diesel engines used in construction, agricultural, and industrial operations. The program uses the same approach we relied on in the Highway Diesel program—tough exhaust standards paired with cleaner fuel requirements. When fully implemented, EPA estimates that these three programs will yield over $175 billion annual health benefits, preventing almost 25,000 premature deaths, hundreds of thousands of respiratory illnesses, and millions of lost work days.

Communities across the nation are counting on these federal programs to help them demonstrate conformity, and more importantly, attain the new ozone and $PM_{2.5}$ standards. Successful implementation of these programs is one of the Administration's priorities. EPA is working closely with the automobile, trucking, engine manufacturers, and fuels industry to ensure the smooth and timely implementation of each rulemaking.

In addition to these regulatory programs, EPA has also developed a number of voluntary programs that are aimed at improving air quality. The Clean Diesel Initiative consists of efforts to reduce emissions from new diesel engines as well as existing diesel engines by 2014. EPA will work with owners of trucks, buses, and nonroad equipment to encourage the installation of innovative and cost-effective emission control technology on existing diesel engines. These technologies can result in reductions of particulate matter, NO_X and VOCs. Another non-regulatory approach to achieving emission reductions by providing travel choices is Best Workplaces for Commuters SM. Built around the tax-free commuter benefits in TEA-21 and modeled after the highly successful Energy Star partnership programs, Best Workplaces for Commuters SM is an EPA-DOT voluntary partnership program that recognizes employers offering outstanding commuter benefit packages that help reduce traffic and traffic-related emissions. To date, over 1,100 employers from 32 states and Washington, DC, are on the national list of Best Workplaces for Commuters SM covering over 2 million employees.

Finally, EPA has launched another innovative clean air program, the SmartWay SM Transport Partnership—a voluntary collaboration between U.S. EPA and the freight industry designed to increase energy efficiency while reducing greenhouse gases and air pollution. To meet these goals, the Partners adopt improved practices and energy saving technologies such as idling reduction equipment/policies, automatic tire-inflation systems, and speed management practices. More than 120 companies across the country have joined as SmartWay Transport Partners since the Partnership became operational in February 2004.

As states and localities move forward in implementing the new ozone and particulate matter standards, EPA has taken several steps to improve the overall implementation of the transportation conformity program through regulatory and proposed legislative actions. Under the Clean Air Act, EPA is responsible for writing the conformity regulations with concurrence by the Department of Transportation (DOT), as DOT is our federal partner in the implementation of the program.

On July 1, 2004, EPA published amendments to the conformity rules that provide clear guidance and procedures for implementing conformity for both the new ozone and particulate matter air quality standards. For example, the final rule describes when conformity first applies in new nonattainment areas. The Clean Air Act and transportation conformity rule allow a one-year grace period before conformity ap-

plies for the new standards, and this grace period begins upon the effective date of EPA's nonattainment designation for each new standard. In addition, the rule describes the general requirements for ensuring conformity under the new standards, such as the conformity test(s) that would apply before a state develops its air quality implementation plan (or SIP).

EPA believes the timing of this final rule was critical for ensuring that new nonattainment areas receive the full benefit of the one-year conformity grace period. New 8-hour ozone nonattainment areas will be required to demonstrate conformity by June 15, 2005, while areas designated nonattainment for the $PM_{2.5}$ standard will be subject to the conformity requirements on April 5, 2006. By finalizing the July 1, 2004 conformity rule, EPA provided new nonattainment areas sufficient time to prepare their conformity determinations and meet the one-year conformity requirement. EPA is working to ensure that additional $PM_{2.5}$ guidance will be available by April 5, 2005 or shortly thereafter.

The July 1, 2004 amendments also incorporate into the rule EPA and DOT's existing guidance implementing the March 2, 1999 conformity court decision, as well as other rule revisions and clarifications that we believe will ease implementation of the program in all nonattainment and maintenance areas. Of particular interest is a revision that streamlines the current requirements for re-determining conformity after certain SIP actions have occurred (e.g., after EPA's approval of a SIP). This revision ensures that a new conformity determination is required only for SIPs that have never been used in the conformity process. Another significant revision implements the Clean Air Act in a more reasonable and practicable manner by allowing transportation planners to base conformity analyses on planning data and information that is available at the beginning of the conformity process.

We are currently working quickly to finalize two smaller rule changes that will affect areas recently designated nonattainment for the new $PM_{2.5}$ standard. The first of these rulemakings will add the precursors for $PM_{2.5}$ (NO_X, VOCs, sulfur oxides and ammonia) to the transportation conformity regulations and specify when each of these precursors must be considered in conformity determinations in $PM_{2.5}$ nonattainment and maintenance areas. We plan to issue this final rule within the next few months. The second rulemaking will address the procedures for determining localized concentrations (or "hot-spots") of particulate matter that could be caused by transportation projects in certain areas subject to transportation conformity. EPA plans to finalize this rule later this summer.

In addition to these regulatory actions, the Administration's SAFETEA proposal for the reauthorization of TEA-21 also improves the transportation conformity program and continues to protect public health. We believe that such improvements will streamline the conformity program to the benefit of state and local governments. I would like to mention two main parts of the Administration's bill that support the transportation conformity process and how they are addressed in the House bill H.R. 3.

First, the Administration supports modifying the timeframe of conformity analyses to provide consistency between the horizons evaluated for transportation conformity and air quality planning purposes. Under the current conformity rule, transportation planners are required to evaluate transportation-related emissions for at least 20 years into the future, even if the SIP covers a much shorter time period (e.g., 10 years into the future). Under the Administration's SAFETEA proposal, the time frame covered by the conformity analysis would be the longest of the following: 1) 10 years; 2) the latest SIP motor vehicle emissions budget year; or 3) a regionally significant transportation project's completion date. The Administration also supports the requirement for an informational analysis of the last year of an area's transportation plan. Such an analysis can provide state and local governments and the public with a critical "early warning" of future long-term air quality problems.

Second, the Administration objects to the 12-month "grace period" provided by section 1824 of the House bill, and instead supports lengthening the transportation and air quality update cycles to 5 years as the Administration proposed. EPA currently requires such determinations every 3 years. The Administration believes requiring conformity updates every 5 years is sufficient for meeting Clean Air Act goals to protect public health.

The Administration opposes inclusion of the provision in section 1824 of the House bill that would change the point at which a conformity lapse begins. Under current law, a conformity lapse begins on the date that an area misses a deadline for determining conformity. However, the House bill would give areas that miss a required deadline for demonstrating conformity 12 additional months to correct the problems that caused them to miss the original deadline, such as changing the transportation plan or state air quality plan.

EPA opposes this provision because it may make it more difficult for areas to attain the health-based air quality standard by their attainment deadlines. For example, under this provision, if an area is unable to demonstrate conformity by a given deadline, it may continue to build transportation projects that could potentially be inconsistent with clean air goals for one additional year before a lapse is imposed. This provision could also delay the use of SIP air quality emissions budgets in conformity determinations and deprive areas the opportunity to verify whether their on-road emissions were consistent with the levels required by the state. The current conformity rule allows areas 18 months to determine conformity when a new SIP becomes available. The House bill already extends this period of time to 24 months. An additional 12 months would further delay the incorporation of new air quality information into the conformity process and undermine the current incentive for areas to resolve conformity issues and make determinations expeditiously.

In conclusion, EPA is committed to partnering with DOT to continue our progress in meeting both transportation and air quality goals. Based on our collective experience in implementing the transportation conformity program, we believe the Administration's proposal will build on the success of TEA-21 and will further assist areas in their efforts to achieve clean air now and in the future. Thank you again for this opportunity to testify today and discuss our programs with you. I would be pleased to respond to any questions that you may have.

Mr. HALL. Thank you, Mr. Holmstead. The Chair recognizes Mr. Njord.

STATEMENT OF JOHN R. NJORD

Mr. NJORD. Thank you very much, Mr. Chairman, and I appreciate you accommodating my schedule, and moving me up on the agenda. Thank you. My name is John Njord. I am the Executive Director of the Utah Department of Transportation, and the past President of the American Association of State Highway and Transportation Officials. And on behalf of all 50 State Departments of Transportation, as well as the District of Columbia and Puerto Rico, we thank you and applaud you for having this hearing on air quality conformity, which is a very important issue for transportation agencies across the country.

When the Clean Air Act was enacted back in 1990, conformity provisions were created to ensure that transportation plans, programs, and projects were in conformance with States' efforts to attain Federal air quality standards. After the 15 years of experience that we have had with air quality conformity, we believe that it is time for some refinements to the conformity process that can and should be made in order to accommodate the new world we are in today.

Now, why would we be interested in that? We need to synchronize the conformity of the air quality planning process. We need to make some commonsense adjustments to the frequency of conformity updates, and also to better coordinate transportation and air quality strategies to meet the new air quality standards.

Since 1999, there have been 74 nonattainment or maintenance areas that have experienced a conformity lapse, putting billions of dollars of transportation projects on hold. In over half of those instances where there has been a conformity lapse since 1999, the reason for the lapse was simply confusing deadlines between the various programs. Transportation conformity has become, year in and year out, a paperwork process that hasn't necessarily improved air quality, but has taken valuable staff resources which could have been better used for transportation planning activities.

Let me give you an example from our good colleague's State of North Carolina. Three years ago, in 2003, they were facing a lapse

in conformity. In order to beat that deadline, they had to redo their transportation plan. They were working with the community on a number of various transportation strategies in North Carolina, and simply ran out of time. Because of that running out of time, they fell into a lapsed situation, and for 4 months, they were under a situation where they could not move forward with over $100 million worth of projects in North Carolina. They were needlessly delayed just because of differing dates. Mr. Chairman, we thank you, and Mr. Chairman Don Young, for acknowledging the need to make improvements to the conformity process, and we believe that conformity-related provisions contained within H.R. 3, the Transportation Equity Act, a Legacy for Users, TEA LU, provides a good start toward fixing that which has been wrong with the conformity process in the past.

In our detailed testimony, we have suggested some additional, minor adjustments that I would like to summarize very briefly here today. First of all, we support the provisions to align conformity time horizons with the State air quality implementation plans and emission budgets, to limit conformity to the end of the maintenance period. However, we recommend that you not give air quality agencies concurrence, which essentially equates to a veto power over the components of the process. We support provisions to increase and coordinate the update cycles for metropolitan transportation plans, together with the statewide transportation implementation programs, but recommend that the cycle be at least every 5 years, instead of the 4 years that are contained currently within H.R. 3.

We support the provisions in H.R. 3 giving MPOs and States 12 months to correct differences, deficiencies prior to invoking a conformity lapse. This puts conformity lapse situation closer to on par with the other air quality sanctions, which don't kick in for 18 months, when you have a lapse situation. We support the provisions in H.R. 3 that provide for the substitution of STELL transportation control measures, and we urge you to take a second look at the process to coordinate between the 8 hour ozone standards and the 1 hour emission budgets, with the interim test with the expanded nonattainment areas.

Now, the goal of air quality conformity is to make air cleaner, and I think that everybody in the room is interested, and everybody across the country is interested in making air quality better. We are all interested in that. Conformity is not a transportation control measure. It is a tool that is used to ensure that transportation plans are compatible with air quality plans, and we would hope that we would continue to be able to work on that basis, and Mr. Chairman, I appreciate this opportunity, once again, to speak to you and to this committee, and would be happy to answer any questions you might have.

[The prepared statement of John R. Njord follows:]

PREPARED STATEMENT OF JOHN NJORD, DIRECTOR, UTAH DEPARTMENT OF TRANSPORTATION

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 Mem-

bers 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.

Mr. HALL. Thank you, Mr. Njord, and we appreciate you, and appreciate all of you that have taken your time to come and prepare for this, and travel here, and give testimony, and travel back, and to keep with your schedule. I will ask you the first question, if it is okay, Mr. Nottingham, we will start with Mr. Njord.

In your testimony, you state that regional emissions analysis for the out years be conducted for informational purposes only, if at all. I think we all recognize that predictions are fraught with uncertainties. However, don't you agree that such an analysis, even with incomplete models or margins of error, provide some basis for the policymakers and transportation planners to maybe initiate some changes for future regional transportation, and for air quality planning? Wouldn't that be some help?

Mr. NJORD. I believe that the out years, there is some value in doing that analysis just for a check. But for conformity, it doesn't make sense doing conformity out 20 to 30 years, out when it is like shooting an arrow. It is only accurate so far. If you are trying to shoot an arrow 1,000 yards, you are not going to hit your target, but under 100 yards, you can certainly hit the target. It is the accuracy of the information that I would be concerned with there.

Mr. HALL. All right. Mr. Strickland, do you have any questions for this witness.

Mr. STRICKLAND. No, sir. Thank you.

Mr. HALL. We are trying to accommodate your schedule, and Mr. Shimkus. Or good doctor, do you have any questions?

Mr. SHIMKUS. For Mr. Njord, Chairman, just the—I would like to—I know you addressed the issues of the out years, and Mr. Njord, why do you have—and excuse me if this was asked, I was talking to Dr. Burgess, why do you have objections to the requirements that MPOs and air quality agencies must agree to the final conformity determinations?

Mr. NJORD. Thank you for that question. We have a great relationship with our air quality agencies on the State level, and work with them on a continuous basis to implement our SIPs and our transportation improvement programs. If, in fact, a concurrence is required, it empowers the air quality agencies more than they are today. Now, if we want to create an additional check-off, then that is the way to do it. What we were hoping to do was to be able to streamline this process, so that we can get through conformity quickly. I don't think we disagree with them. It is just a matter of authority.

Mr. SHIMKUS. Yeah, I think—I guess our confusion and mine is that, obviously, the current practice almost bespeaks that this is already occurring, and the question is do you codify it in practice, and you would disagree with that?

Mr. NJORD. We would hope to streamline, rather than to codify a process that already works. Why change it? It works now.

Mr. SHIMKUS. Okay. That is all I have, Mr. Chairman.

Mr. HALL. All right. I reclaim my time. Doctor, do you have questions for Mr. Njord? Thank you. I reclaim my time. I think I have 3½ or 4 minutes left.

Mr. Nottingham, what are the six areas that are currently in a conformity lapse? You discussed a mismatch of transportation and air planning in your testimony, and the fact that the assumptions underlying transportation plan emissions and emissions budgets might be different.

Mr. NOTTINGHAM. Chairman Hall——

Mr. HALL. Do you have examples of this?

Mr. NOTTINGHAM. Oh, yes, sir. If the question is—I am sorry, I misheard the question. We currently have, as of today, six areas in the country that are actually in a lapse. I can give you where they are if you would like.

Mr. HALL. If you would.

Mr. NOTTINGHAM. Certainly, sir, and I can give you a little bit of information about them. In San Bernardino County, California, in—specifically in the Searles Valley portion—beginning back in April 22, 1999, the lapse began. They are expected to be out of their lapse this coming June 15, and the reason—and let me know if you want me to skip over the reasons. I can just give you——

Mr. HALL. Please continue.

Mr. NOTTINGHAM. Yes, sir.

After San Bernardino County, it is Billings, Montana; Lake Tahoe, in the California/Nevada border region; Dover and Kent County, Delaware; Sacramento, California; and Reno, Nevada.

Mr. HALL. Are any of these examples in conformity lapse, what they call conformity lapse?

Mr. NOTTINGHAM. Yes, sir. All of them are.

Mr. HALL. All right. Will H.R. 3 help alleviate this problem by synchronizing studies, or in any other manner?

Mr. NOTTINGHAM. Yes, sir. They would. Speaking in general, many of the lapses we see, both currently and in general, are really, as Director Njord touched on, almost "administrative and paperwork lapses," due to the fact that we don't have the right synchronization right now. We have got air quality plans with certain horizons, typically 3 years now, and transportation plans with 20 and 25 year horizons. Therefore, we have to take resources away from State DOT and MPO real highway and transit planning to constantly be updating these plans. Sometimes, people are working on the current 3 year air plan and the next one at the same time. So certainly H.R. 3 would go a long way. We actually do think H.R. 3, supplemented with a couple of the administration's additional proposals, would even do a better job.

Mr. HALL. Well, I thank you for that, and you know, we hit deadlines from time to time. Can you give any examples where, for example, an area fell into what they call conformity lapse because it couldn't finish a conformity determination in time, even though it didn't exceed its emissions budget?

Mr. NOTTINGHAM. Yes, sir, Mr. Chairman. In Billings, Montana, also in the Lake Tahoe region, and in the Dover and Kent County, Delaware regions. Those are all currently 3 examples where the conformity lapsed because deadlines were missed. So the answer to your question is those 3 examples currently, and many more in past years.

Mr. HALL. All right. My time is almost up. I recognize the gentleman from Virginia.

Mr. BOUCHER. Thank you very much, Mr. Chairman, and while I didn't make an oral opening statement, I had in my written, prepared statement, which is now part of the record, thanks to you, and to Chairman Barton, and to your outstanding staffs for their bipartisan work with us, in structuring the language that is in H.R. 3, which is the subject of today's hearing. We very much appreciate your cooperation and the good work on both sides, which has led to the construction of that language.

Let me ask our witnesses if the administration supports that language, the language that is in H.R. 3, which would address the lapse problem. Mr. Nottingham.

Mr. NOTTINGHAM. Thank you, Mr. Boucher. We—the administration—does support many of H.R. 3's conformity proposals. We think they are on track and going after the same problem we are trying to address, which is to increase the synchronization you have heard about today, try to integrate more closely the transportation and the air quality planning processes. I will say that we do share Mr. Njord and AASHTO's, and many other stakeholders' concerns that putting into code, by codifying almost a veto, really a veto role for the air quality agencies in transportation conformity determination requirements, we think is going a little too far. We understand it is well intentioned, but in reality, all the States' DOT heads and air quality heads report to the same elected official, the Governor in most cases, almost all cases, and they work pretty well together. We are worried that having an extra item in code may just create some unforeseen problems.

As far as—maybe if I could pick one other area that——

Mr. BOUCHER. Well, I understand you are offering some suggestions for modifications of these provisions.

Mr. NOTTINGHAM. Yes, sir.

Mr. BOUCHER. But in the main, you support what—the direction we have taken——

Mr. NOTTINGHAM. Yes, sir. For example, moving from 3 to 4 years on the conformity and planning horizons is the right direction. We would ask you to consider taking that an extra year to 5, but you are on the right track with H.R. 3.

Mr. BOUCHER. All right. That is good. Mr. Holmstead, do you agree on the—with the comments Mr. Nottingham has made?

Mr. HOLMSTEAD. Thankfully, yes. I do. We are on the same page on this one. I think we support, generally, the direction that H.R. 3 is moving in. This—particularly this issue of the 4 versus 5 years. One of our concerns has just been that these plans become more meaningful and better if they don't happen so often.

Mr. BOUCHER. But in the main, you do support the trend that is reflected in these changes?

Mr. HOLMSTEAD. Yes.

Mr. BOUCHER. All right. And just to highlight the need for these changes, to talk a little bit about what is happening today. I understand that there are six areas that are currently in lapse. Describe, if you will, what is happening in these six areas. Are Federal funds for projects being restricted as a consequence of the lapse, and are these lapses primarily caused by the lack of synchronization in the planning cycles between State implementation plans and transpor-

tation implementation plans that you referred to earlier? Who would like to answer? Mr. Holmstead?

Mr. HOLMSTEAD. Well, I have to confess that I am not familiar with the details in each of these——

Mr. BOUCHER. I think Mr. Nottingham probably is the proper person to answer. Mr. Nottingham.

Mr. NOTTINGHAM. Sure. Thank you, Mr. Boucher. In general, the current six areas that are lapsing are not experiencing big problems with project delays. And that, I think, speaks well to the regime generally as it has worked, which is when you do lapse, you can still continue projects that have begun and are already underway in a certain phase. For example, if you are in the right-of-way phase, buying real estate for a project, you can keep going with right-of-way, but if you are in lapse, you can't go to that next phase, which typically would be actual construction, or perhaps preliminary engineering.

And most of these cases are shorter term. I will say there is a little bit of a hidden cost often, where it relates a lot to construction seasons. I know from the part of southwest Virginia you are in, sir, you understand very well that there are some times of the year where it just isn't really possible to be laying asphalt and building roads. Chairman Hall's area of the world is a little more fortunate. They can pretty much build almost all year round. If you do have even a 1 or 2 or 3 or 4 month lapse, and it is the wrong time of year, it can push you into another construction season. On paper, that looks like not a big deal. But, when you realize that every year we face enormous inflation costs, and you look across the country, it is kind of a quiet, but very real cost concern to us.

Mr. BOUCHER. And are the reasons for the lapses in these six areas the lack of synchronization between the SIP and the TIP that you have described earlier, or is it a basic conflict in policy between the transportation implementation plan and the State implementation plan?

Mr. NOTTINGHAM. Sir, I would say largely the former. And specifically, in the first three I mentioned, in San Bernardino and Billings and Lake Tahoe.

Mr. BOUCHER. Would you say that that condition is characteristic of lapses when they normally occur around the Nation, that it is usually because of a lack of synchronization in schedules?

Mr. NOTTINGHAM. If I could, let me just confer with staff, to make sure I get that right. I am advised, sir, that in most of the cases, it is. It really relates to missing the 3 year time cycle deadline. In transportation circles, 3 years is actually a pretty short window, when it takes, typically, unfortunately—and we are working with some other committees on some of these problems—but often, 4 or 5 years to get through the environmental process in a project, 3 years is—and then working on the next 3 year cycles is a very short window.

Mr. BOUCHER. Okay. Mr. Holmstead, in the time I have remaining, let me ask you about your recommendation that 5 years be the date for conformity updates, rather than the 3 years, which is current law. Why choose 5 years? What is the magic of that number? Do you have any studies or any empirical data showing that 5

years is more appropriate than 3, or is it simply a matter of saving work and saving money?

Mr. HOLMSTEAD. Well, it is based on the judgment of people from both EPA and DOT, and State and local officials who work on these plans, and one of the concerns, as I think you know, is the 3 year cycle comes around so quick that people are just doing the paperwork to comply with the date, and I think our judgment was that if you expand that to 5 years, they become more meaningful exercises, and you get better modeling, you get better analysis. That could be said of 4 years, I suppose, but 5 years, actually, better aligns with sort of the current transportation planning process, and that is why we support the 5 year process, as opposed to just 4.

Mr. BOUCHER. Did you have any analysis of the consequence, in terms of emissions, if we go from 3 years to 5 years, as you recommend?

Mr. HOLMSTEAD. I wouldn't expect to see any emission consequences. I can't tell you that we have analysis, but it would be, I think, difficult to quantify any difference between 4 and 5.

Mr. BOUCHER. Well, in any event, we have settled on 4, in the draft that is pending at the present time. You don't have a problem with that, I suppose.

Mr. HOLMSTEAD. We would rather have 4 than 3.

Mr. BOUCHER. Okay. I could anticipate that answer. Thank you very much, Mr. Holmstead and Mr. Nottingham. Did you want to comment, Mr. Nottingham?

Mr. NOTTINGHAM. If it would be okay. Just very briefly, sir, because your question touches on a very important point, the 5 year difference compared with 3 years. In answer to your second question, if I understood it correctly, there would not be any implications on any actual conformity determinations by going from 3 to 5. In the event that new projects were added or new data came in, the conformity process would automatically be triggered regardless of the 3 or 5 or 4 year window. So there is a safeguard there. A point I think is also worth making is that the general conformity timeline that covers pretty much the whole world, except the highway and transit sector, is 5 years. So the fallback time horizon for conformity universally is 5 years. Specifically to highways and transit, it is 3. And, if you look, we have got, I think, by our count, about 7 different timeframes we deal with in planning and air quality conformity work. Going to 5 years would greatly harmonize all of those.

Mr. BOUCHER. Thank you both. Thank you, Mr. Chairman.

Mr. HALL. Well, thank you. And thank you, gentlemen. The Chair recognizes Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman. And I was going to recognize Bob Meyers, who—a former committee staffer, but he snuck out, so I don't know where he went to. But while I have some time, I may be getting off the subject, but I am wondering, two areas which we are going to be addressing in an energy bill. One is trying—in the last bill, H.R. 3, there was a move to address the balkanization of fuels, based upon local area SIPs and the mix—the multitude of mixtures of fuels in a very short distance. If we do that, does this affect this process at all?

Mr. HOLMSTEAD. It really is a completely separate issue. I—we recognize that the balkanization of fuels issue is an important one to consider. As you know, Mr. Shimkus, we have tried to work on some ideas to address that, but I don't really think it has an impact one way or another on the conformity process.

Mr. SHIMKUS. What about the—there is another provision in the bill that deals with—and my crack staffer's wife is in the process of giving birth to a baby right now, so he is not here to give me the proper terminology, but in—across—there is regions in the country where they are in nonattainment primarily because of activities across State lines. In my area, because of St. Louis, and that is not uncommon, and so—and part of the issues was an acknowledgement of that, an acknowledgment of the improvements made locally, and not to be—and not a disincentive based upon what is not controllable by the State. Has that evolved in any part of this debate, either?

Mr. HOLMSTEAD. We refer to that as the transport issue.

Mr. SHIMKUS. That is right.

Mr. HOLMSTEAD. As pollution as transported from one region——

Mr. SHIMKUS. Right.

Mr. HOLMSTEAD. [continuing] to another. Again, I think that that is largely unrelated to this issue of transportation conformity. One of the concerns that I think people have legitimately had is if you are in a small area with very little traffic, you may be in nonattainment primarily because of emissions from another area, and the question is well, gee, does it really make any sense for us to do all this transportation planning, when transportation sources are not a big—not a significant issue in our area. We have, by regulation, tried to address that already by allowing an area to show that transportation is sort of a de minimis issue, and not have to do the transportation conformity in those situations. And whether that is something we can better do through legislation, I think, we would be open to talking about, but we do try to accommodate that within our existing regulatory structure.

Mr. SHIMKUS. And just to stay on this type of direction, if we make the assumption, and I am just—that H.R. 3 of the last Congress will be pretty much the base of the national energy policy. It may not be. Is there anything in there that would affect this debate on this bill that we are referring to, I guess, which is H.R. 3?

Mr. HOLMSTEAD. I don't think so, but I have to——

Mr. SHIMKUS. It might be good to know, because then, we would be going crossways.

Mr. HOLMSTEAD. I think the answer to that is no, but let me just suggest that if we—that we go back and think as to whether there is any such issue, and if so, we will certainly——

Mr. SHIMKUS. Yeah. Raise it with my——

Mr. HOLMSTEAD. [continuing] advise the——

Mr. SHIMKUS. [continuing] staff—and my staff would be happy to reconcile any differences.

Mr. HOLMSTEAD. Okay.

Mr. BOUCHER. Thank you. Mr. Chairman, I yield back.

Mr. HALL. Thank you. The Chair recognizes the gentleman from California, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman, and Mr. Holmstead.

Good to see you again, I suppose. Except I do want to take this opportunity to tell you how deeply disappointed I am about the communications between your office and members of this body, because it appears that they have entirely broken down. We have made many requests for information, and I don't think you have been responsive. The last response I received from you to an information request arrived on November 17, 2004. That request had been outstanding for almost 5 months. Your response was 4 pages long. It arrived on the morning of November 17, just minutes before the EPA Deputy Administrator was scheduled to testify before the committee in which I am the Ranking Member. Among other incidents, you previously failed to respond to a set of questions for the hearing record on clean air issues for 8 months after I sent you the questions, and I have raised the issue before with you at hearings like this. Back in May 2002, and again in July 2003, but I must tell you, I don't see any improvement.

Most recently, you failed to respond to questions for the hearing record from a November 2004 hearing. That was last November. It is now March. Today, again, just minutes before this hearing, I received a partial response to the request, with a promise to provide the remaining responses later. I see a clear pattern, and I consider it unacceptable.

Mr. Holmstead, do you dispute Congress' authority to conduct oversight of Federal agency activities?

Mr. HOLMSTEAD. No, I certainly do not. We just are obviously trying to take care of all of the obligations that you have given us, and so, we do our best to try to make sure that we respond to requests, while at the same time, we are meeting statutory and judicial deadlines on other things. But I can tell you there are people who put in an——

Mr. WAXMAN. These are information requests——

Mr. HOLMSTEAD. [continuing] enormous amount of time.

Mr. WAXMAN. [continuing] Mr. Holmstead, that address serious matters. For example, the questions I and my colleagues sent in November 2004 concern EPA's pending rule to regulate mercury emissions from power plants, and many of the same issues we raise were flagged by the EPA Inspector General in a recent report. The Inspector General strongly criticized EPA for failing to conduct an unbiased technical analysis needed to support the rule. We had inquired in detail about EPA's plans for such an analysis. Do you disagree that these are important issues?

Mr. HOLMSTEAD. No, these are certainly important issues. It——

Mr. WAXMAN. In your testimony today, you made a number of valuable points about the importance of transportation conformity requirements to clean air and to public health, but I feel you undermine your credibility by repeatedly failing to respond in a complete and timely manner to basic oversight inquiries.

I would like to discuss one other matter with you today in the short time I have left. Another key piece of the clean air agenda is the implementation of the new national, health-based standards for fine particulate matter. Cities and towns across the country currently have unsafe air quality, due to particulate pollution. Fine particles aggravate heart and lung diseases, and for tens of thousands of Americans, cause premature death. The administration

should be doing all it can to move forward on this problem. Specifically, EPA must issue the fine particulate matter implementation rule, which gives the States guidance in developing their cleanup plans. But instead, we have seen foot-dragging and delay.

Former Administrator Levitt testified before the Senate last April that EPA intended to propose the implementation rule in June 2004 and finalize it in late 2004, or early 2005. EPA sent the proposal over to OMB formally last October. OMB has now exceeded its review period, but still has not released the rule. When is the administration going to issue this important rule?

Mr. HOLMSTEAD. I believe it will be fairly soon. We are trying to coordinate a number of important rules, including rules that will do more than this country has ever done to reduce fine particle pollution, among those, the non-road diesel rule, among those, the clean air interstate rule, both of which will achieve greater emissions reductions than anything any administration has ever done. We are obviously working to try to——

Mr. WAXMAN. Well, you don't—you are not going to do it until the rule is promulgated, so in this particular area——

Mr. HOLMSTEAD. No, no. We actually regulate directly, so we—the implementation rule you refer to is obviously important, but we want to coordinate that with the other rules that are actually achieving immediate reductions.

Mr. WAXMAN. But this rule won't go into effect until OMB signs off on it. Isn't that correct?

Mr. HOLMSTEAD. The process by which States take action to improve their air quality is not dependent on that rule.

Mr. WAXMAN. No, but this is a guidance for the States.

Mr. HOLMSTEAD. This is a guidance for the States——

Mr. WAXMAN. You said soon.

Mr. HOLMSTEAD. [continuing] and we are trying to——

Mr. WAXMAN. Soon means what?

Mr. HOLMSTEAD. I would expect that——

Mr. WAXMAN. Weeks?

Mr. HOLMSTEAD. [continuing] we would be in a position to propose the rule within the next month or 2.

Mr. WAXMAN. Okay. Thank you, Mr. Chairman. I see my time is up.

Mr. HALL. The Chair recognizes Mr. Burgess, the gentleman from Texas.

Mr. BURGESS. Thank you, Mr. Chairman, and I apologize for being out of the room for part of the time. Of course, the Chairman and I represent the same area of north Texas, which is under some—what are we calling it now, nonconformity issues, and I have just had a lot of concerns that highway money would be diverted from the north Texas area under the nonconformity rules. Our biggest problems in the Denton County area that I serve are—our biggest problems are, in fact, roads that were never meant to handle the traffic loads that they are handling, and the resultant congestion is responsible for a significant amount of air quality problems, so what are we doing to make certain that while we are trying to enforce compliance with conformity, that we are not actually making the problem worse? If we divert highway funds from our area to west Texas, we are not—we may keep the State's rate

of return, but we are really doing little to alleviate the air quality issues.

Mr. NOTTINGHAM. Dr. Burgess, if I may, you raise a very important question. It is one I wrestled with as the Virginia Commissioner of Transportation, where we had several fast growing suburban or urbanized areas, not too unlike north Texas in the Dallas region, that were desperate for some new capacity, and for some congestion relief, and other improvements, and were constantly bumping up into the conformity ceiling and headroom, and as a State Commissioner, it is very tempting to just put your extra resources elsewhere in the Commonwealth or the State, where you don't need to worry about that. And that is great for those regions, but often, they are not the ones with the traffic, or the severe traffic problems. They all have needs, but—for sure, but I think some of the proposals we have talked about today that are in H.R. 3, and also, some additional ones in the administration's SAFE-TEA proposal, by—would improve the synchronization, as we have talked about, better align the air conformity planning process, and the transportation planning process.

One of the problems we have today, sir, is technology, and this is a good part of the problem, technology, cleaner fuels, some of the good work that the EPA has done over the years, good work that our industry has done, the auto industry and others. The transportation piece of the clean air problem is getting much better very fast, and has over the last 35 plus years, and so, when we look out at a 20-year transportation plan, and compare that to a 3-year air quality plan, in a fast growing region, and have to guesstimate what the technology and the actual air conditions might be, mind you, the trends are positive now, it becomes very speculative. And to put a—to raise the specter for a region, that they may have to pause their major new projects while they recalculate estimates, rerun projections, it is a very tough nut to crack, and I don't know if I have answered your question, but I think that H.R. 3 is on the right track to meet the concern that you have raised.

Mr. BURGESS. Is there also any attention paid to the transport of, say, ground level ozone from other areas, and in our north Texas area, we do get some transport of ground level ozone from the Houston Gulf Coast area, and while those numbers may not be very high, in the range of 15 to 35 parts per billion, if we are only out of compliance by 1 or 2 parts per billion, obviously, that is a significant—that transport ground level of ozone transport is a significant contribution to us being out of compliance.

Mr. HOLMSTEAD. That is an issue that we are well acquainted with, and actually, have tried to address that in some regulatory changes, including a change that was overturned by the courts when we tried to accommodate that so we could better synchronize the schedules. I know there has been an effort to try to recodify that, and we would support that kind of an effort. The other thing I would say, though, is to some extent, in Texas, you are fortunate because the transport comes from the same State, and so what we are seeing in the State of Texas is a concentrated effort on the air quality side to try to make sure that the problems in the north Texas area, and their relationship with the Houston area, really are all considered together, and we think the State of Texas is ac-

tually moving a long way in the right direction to address both of those.

Mr. BURGESS. I would just make the point that we do receive some contribution from the burning of the sugar cane fields in Mexico, as well as occasionally, we get the brown muck moving in from the Mississippi Valley.

Thank you, Mr. Chairman. I will yield back.

Mr. HALL. Thank you. The Chair recognizes the gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman, and all due respect to my doctor colleague, we will deny we send anything up to the Dallas-Fort Worth area from Houston. But—again I want to welcome our Administrator. I have some concerns about the transportation conformity process. In the last session of Congress, Congressman Brady and I from Houston, or the Houston area, introduced legislation that would allow for grandfathered projects to go forward under a conformity lapse, and the concern that we have is that we have these projects, and yet, for some reason, they are—we are in noncompliance, and those projects stop. I know that is the teeth that EPA has, but it sure seems like economic waste in particularly urban areas, or anywhere where you have projects that are underway, and they get partially built, and then they are halted because of Federal law.

Having said that, I want to give you an opportunity to defend the necessity of the transportation conformity process as a whole, and is there a way we could split the difference if something is going on now that may actually help us with our both traffic, and ultimately, our air problems? Is there a way we can have the best of both worlds, both the carrot, but also the stick, to be able to finish some projects?

Mr. NOTTINGHAM. Thank you, Mr. Green, if I could. I think the transportation community welcomes a little bit of a stick. And all of the State DOTs have numerous environmental experts now. The transportation sector as a whole—sort of an old saying—is not your father's Oldsmobile. It is a whole new world out there, and so, the fact that the Clean Air Act is important, and that the transportation community does embrace it, that is not a problem. The fact that there are very real sticks, to use your word, is not a problem.

I will say, we have talked earlier today about the need to better align and coordinate some of these planning horizons, because too often, the stick gets triggered really unnecessarily because there is a disconnect, not because there a wrongdoer in a State agency trying to wrong the environment. It is just the system and the process—the time it takes to update a transportation plan and the associated conformity determination every 3 years, to remedy, rectify that, and to marry it up with a 20 or 25 year transportation plan. And so, doing some of the things that H.R. 3 does, combined with maybe a couple other things that our administration bill does, and that the Senate bill does, really would help that matter. But we are not—I am not—here to say do away with some of the strong requirements, because they are there for a good reason. The transportation community welcomes them, by and large, and it—the grandfather provision—is an interesting one, because places like Atlanta, and other places, have really had to wrestle over the years

with how to keep major projects, that they have invested millions and millions of dollars on, moving while they sort out——

Mr. GREEN. And again, knowing Atlanta, but knowing the Houston area, we have some of the same problems, because again, we are—some of those projects actually would help our quality, if we could get them done. Recently, I had a real productive meeting with Jeff Clark from your EPA's air office, where we learned that EPA activities are coming soon, under the current law, to reduce industrial air toxic levels. Could your office provide any estimates on the future reductions of air toxics, both from the mobile sources that we are talking about here, that the Houston area may see under current law, because our concern, and there was a series of articles a few weeks ago concerning the toxins, but they were mainly from—toxics, but they were talking about stationary sources, our industry. And under provisions of our Highway Bill last year, do you see any weakening in pollution control from mobile sources in general under this legislation?

Mr. HOLMSTEAD. Really, there are two different questions you ask.

Mr. GREEN. Yes.

Mr. HOLMSTEAD. One is about the toxics from stationary sources, the toxics from—and then, the second one is the toxics from mobile sources.

Mr. GREEN. Well, then, since we are dealing with highway, this is a mobile source problem, I assume.

Mr. HOLMSTEAD. Right. Right. I don't think any of the provisions that are in your bill would have a significant impact on what we call mobile source air toxics one way or another. With respect to the overall reduction of air toxics emissions, we are now nearing the end of the first stage of the process of controlling those pollutants. I know that nationwide, our estimates are that that has reduced air toxics by about 1.7 million tons a year. I don't know exactly what that means for the Houston area, but all of those stationary sources, just in the last little while, have been required, or will soon be required, to make significant reduction on air toxics emissions, and the city and its residents will soon see the benefit of those.

Mr. GREEN. Okay. And I know on a separate issue, Mr. Chairman, one of our concerns is, at least in the Houston area, is that it seems like some of the toxins from the upsets or the accidents are actually so much more than the permit, and somehow, I know, working with my local officials, my State, and hopefully, EPA in their regional office, will be able to see what we can do to handle that.

Thank you, Mr. Chairman.

Mr. HALL. Thank you. The Chair notes the presence of the Chairman of Energy and Commerce, the gentleman from Texas, Mr. Barton, recognized for as much time as he consumes.

Chairman BARTON. Well, thank you, Mr. Chairman. I won't take very much time. I want to compliment you for holding this hearing, and I want to thank our two witnesses from the EPA and the Department of Transportation for being here. What we are trying to do is hold a hearing on a piece of legislation that was in last year's highway, that we worked with on this committee in a bipartisan

basis. It is our committee's jurisdiction, but we have acknowledged to the Transportation Committee that we will put it in, that we did put it in last year's highway bill, and we are going to put it in this year's highway, unless there's some controversy that erupts in this hearing.

It is just common sense. It conforms the transportation plan, the highway plan, planning horizon, with the environmental horizon of the EPA. It is not changing any environmental law, or anything like that. It is simply allowing communities that have ongoing projects not to have those highway projects automatically stopped, because there is a lapse or a conformity difficulty between the two statutes. So we worked in a bipartisan basis to put this proposal together. It was in last year's highway bill. It did pass the House of Representatives. Our intention is, if this hearing goes well, to put it in this year's highway bill, and from what little I have participated in the hearing, it looks like we are having a good hearing. So I want to thank our witnesses, and I would thank you, Mr. Chairman, for holding this hearing.

With that, I would yield back.

Mr. HALL. I thank the Chairman. The Chair recognizes Ms. Solis, the gentlelady from California, for 5 minutes.

Ms. SOLIS. Thank you, Mr. Chairman, and I also want to recognize that you are having a hearing on this very important issue, and want to thank you and our Ranking Member also for that, and welcome the guests here.

I represent a district that is heavily impacted by various high levels of smog, carbon monoxide, $PM_{2.5}$, PM_{10} standards, leaving, in many cases, the air very unbreathable. We have population there that is largely Hispanic, about 70 percent, and more than twice as many of our children there are affected by asthma, high rates of asthma. We have very, very large freeways, congestion, and in some areas, even—in my district, we even have some rock quarries where there is a high level of dust particulate matter that consumes most of the area.

I have been working for the last few years on environmental justice issues, and wanted to ask you if you could answer some questions for me, Mr. Holmstead. Can you tell me what impact on underserved communities a planning delay, under both the House language and the Senate, and administration language is? That is one. Second, can you please tell me in detail what process you used, EPA, to come to that conclusion, and then, third, could you tell me what outreach efforts you conducted to reach out to communities that are underserved, that are most heavily impacted?

Mr. HOLMSTEAD. The planning delays that you refer to, does that mean the extent of time between the——

Ms. SOLIS. Yes. Yes.

Mr. HOLMSTEAD. We actually think that that will improve the plans, and I——

Ms. SOLIS. As it affects underserved communities? Can you explain that?

Mr. HOLMSTEAD. Well, we think that it will improve the plans everywhere. Our goal is to make sure that every area of the country has healthy air, and so we don't really distinguish one community from another. We want to make sure your community has

clean air to breathe. We really—that is our goal for the whole country. It—these—this conformity process is a part of a much larger effort, and we are spending enormous time and effort on it. We hope that by giving a little more time between these plans, we will actually get a better result by having better coordination, more detailed analysis. And I think generally, people agree on that. There is some debate about whether it should be 4 years or 5 years, but we think that will achieve a better result. We think there is a number of other things that can be accomplished, in part through the transportation bill, things such as diesel retrofit, anti-idling programs, things that we and DOT are both working on, that have very significant improvements, especially in heavily urbanized areas. And I will say California has been at the forefront of supporting some of those efforts. I think the State now——

Ms. SOLIS. They are putting—yeah, in many cases——

Mr. HOLMSTEAD. Yeah.

Ms. SOLIS. [continuing] they are at the lead, yes.

Mr. HOLMSTEAD. Yeah. And they are putting, like——

Ms. SOLIS. Right.

Mr. HOLMSTEAD. [continuing] as of this year, $140 million a year into these diesel retrofit programs that should make a significant difference. So we do recognize that there are areas, particularly heavily urbanized areas, where this is an important issue, and we are working not only at headquarters, but through our regional offices, to better address those.

Ms. SOLIS. Have you done any outreach to underserved communities at all? Is that anywhere in a part of your design?

Mr. HOLMSTEAD. Very much it is. We have a——

Ms. SOLIS. Can you get us that information?

Mr. HOLMSTEAD. Yes. I would be happy to.

Ms. SOLIS. Okay. Because I want to go on to one more question. You actually wrote an editorial, in the Chicago Tribune, that the President's Clear Skies proposal has been endorsed by the National Governors Association, National Association of Counties and the U.S. Conference of Mayors and National Conference of Black Mayors. Is that, in fact, accurate? Did they, indeed, endorse this piece of legislation?

Mr. HOLMSTEAD. Apparently, it was not accurate. I believed that it was. They—I think at least one of those groups said, is they endorsed the concept of a multi-pollutant bill that is very close to the Clear Skies Act, but they had made it clear that they don't specifically endorse one act or another. So, I have learned my lesson, and I will be more careful about——

Ms. SOLIS. And that was an editorial that you wrote.

Mr. HOLMSTEAD. That was an—it was a letter to the editor that I wrote.

Ms. SOLIS. Right. So it was inaccurate.

Mr. HOLMSTEAD. Yes.

Ms. SOLIS. Okay. Thank you very much.

Mr. HOLMSTEAD. That—only that part of it was inaccurate.

Ms. SOLIS. Well, that is a large part. You are talking about major organizations.

Mr. HOLMSTEAD. Yes.

Ms. SOLIS. Thank you.

Mr. HALL. The Chair recognizes the gentleman from Pennsylvania, Mr. Murphy, for 5 minutes.

Mr. MURPHY. Thank you, Mr. Chairman, and I also want to thank you for holding this hearing, and appreciate our panel being here.

A couple of quick things. Mr. Holmstead, in your testimony, you mentioned several programs that will greatly reduce vehicle emissions, namely the two diesel rules, and EPA's Tier Two program, which enables more areas to meet Clean Air Act attainment requirements. Can you comment on how the impending promulgation of the Clean Air Interstate Rule next week will further help communities meet these attainment goals?

Mr. HOLMSTEAD. The Clean Air Interstate Rule will actually be the single biggest rule that EPA has done to improve air quality since the 1970's, and throughout the eastern part of the United States, it will substantially improve air quality. Because largely, in that region of the country, we have a regional problem, and so, it will, in fact, be from a public health perspective——

Mr. MURPHY. What area of the country?

Mr. HOLMSTEAD. Really, everywhere east of the Mississippi.

Mr. MURPHY. Okay.

Mr. HOLMSTEAD. Pennsylvania in particular is one of the areas that is affected by this transport of air pollution from power plants, and this will reduce that very significantly, on sort of a gradual glide path over time, and the idea has been to do that while at the same time, preserving our energy diversity.

Mr. MURPHY. I know we have a problem like that in southwestern Pennsylvania, the Pittsburgh region, which receives daily windborne things from our good friends in Ohio and West Virginia, which we would rather they keep. But the second area here I wanted to ask about is, in the area of transportation air quality planners. As this goes through, can you help me understand this? When—since these groups have been meeting together, when it comes under transportation planning, and that has been a great benefit, does that include highway planning? Does it also include mass transit?

Mr. NOTTINGHAM. Mr. Murphy, yes, both the transit and highway plans are merged together into a regional transportation plan.

Mr. MURPHY. Because I wanted to ask this. I know in Pennsylvania, our Governor is thinking of taking a substantial part of highway funds, and transferring it over to our mass transit agencies, SEPTA in Philadelphia, and the Port Authority in Pittsburgh. And I am curious if such things require any sort of review or planning, what impact that has on other areas of air quality. For example, if highways are not widened as they should, or ramps are not built as they should be, you end up with a lot of traffic sitting still, dumping a lot of pollutants into the air, even at the cost of just maintaining mass transit at status quo, with no expansions at all. Is there any requirements that such moves require any sort of review, or can that just be done?

Mr. NOTTINGHAM. Yes, sir. We, the Federal Highway Administration and the Federal Transit Administration, will need to sign off on plan adjustments to reflect that type of, what we call, flexing of highway funds into transit. There are several ways, and Penn-

sylvania is very experienced at doing this, of flexing highway moneys into transit. It is not per se illegal or wrong at all. It cannot—those funds cannot go to operating expenses for transit. My understanding is many of the large transit agencies faced with cash-flow problems really need money in the operating side, so we do keep an eye to make sure that it is not going there. It is supposed to go to the capital side. But——

Mr. MURPHY. Capital side being what with mass transit? Purchase of bus?

Mr. NOTTINGHAM. Purchase of—yes, sir. It would be rail or bus infrastructure, typically. Perhaps a facility—to a maintenance facility and that type of thing.

Mr. MURPHY. So in that, you will do a careful review of those things as the request comes through.

Mr. NOTTINGHAM. We will, sir, and I would be happy to keep in close touch with your office. We have heard from a number of offices within the Pennsylvania delegation, and to all those inquiries, we have said we will closely coordinate with the delegation.

Mr. MURPHY. We are very concerned about that, because we want to make sure that mass transit stays strong, but I know in my district, unfortunately, I have a lot of interstate highways, and no one ever bothered to finish the ramps, so we have some ramps to nowhere, and some that are half done and three quarters done. It is—and I just see that as a lot of traffic sitting still, and not doing what the interstate is supposed to do. So, I would hope you review that very carefully, and I would appreciate any opportunity to discuss this in more detail with you at another time.

Mr. NOTTINGHAM. Thank you, sir. We look forward to that.

Mr. MURPHY. Thank you. Thank you, Mr. Chairman.

Mr. HALL. The Chair recognizes the gentleman from Texas, Mr. Gonzalez.

Mr. GONZALEZ. Thank you very much, Mr. Chairman, and first, I apologize to the Chairman and members of the committee, and of course, to the witnesses, because I have missed just about everything. And we try to do everything in the space of a day and a half here, and it is rather difficult. But my question would go to Mr. Holmstead. And I am from San Antonio. I represent half of San Antonio. We are currently under, I think, the designation of deferred nonattainment. I don't want to compare it to anything, but it is kind of a limbo, kind of a strange situation to be in. And of course, we are 150 miles from Laredo, right up IH35, and so now I am going to talk about cross-border trucking, and I don't know how familiar you are with what is going on there, but of course, there is a mandate to use low sulfur fuels, and that is for the American trucks. The problem is with the Mexican trucks coming across the border. I think there is a 3 week pilot project in Nogales, Arizona to study this. My concern, and I hope whatever information we glean from that can be used, but is there anything anticipated, or what are you all doing regarding other areas, especially in areas such as San Antonio, which I think would bear a tremendous amount of that type of traffic? And any update you may have, and what you know regarding the Nogales situation.

Mr. HOLMSTEAD. I am glad that you asked that question, because we have been—it is an issue that we have been looking at very

closely, and I must say, working also very closely with our counterparts in the Mexican side of the border. We believe that on about the same timeframe, that the low sulfur fuel is available in the U.S., it will also be made available in northern Mexico. I understand that there are conversations at senior levels within the Mexican government, as you know, Pamex would have to make the kinds of investments to provide that fuel. But our understanding is that that fuel will be made available, and that they are also looking at other strategies for reducing the impacts of border crossings there. You mentioned the project that we now have going on in Arizona, but it really will be applicable. We are looking at different technologies for actually measuring the pollution, strategies for reducing the idling time for trucks that may be idling at the border. At this point, based on the analysis that we have seen, we believe that San Antonio will be able to meet its obligations to come into attainment, consistent with this what we call early action compacts. And again, I—and I think all of us at EPA congratulate the local officials, who have really seized that issue as a way to take earlier action than they otherwise would have been required to do, so that they wouldn't have an air quality problem. And currently, they are on track, based on everything we see to ensure that they do meet attainment. At the same time, we are watching the issue of the cross-border traffic, to make sure that we have a good handle on that.

Mr. GONZALEZ. Is there any timeframe as far as any studies, anything that is going to be definitive as to what you discover? I know if it starts March 11, it is 3 weeks. After you study, I guess the measurement of the particles or whatever is involved, what are we looking at as far as getting that information back? Because my local area Council of Governments is obviously very concerned. NAFTA has been resisted as far as the cross-border trucking is concerned for many reasons, but now we find ourselves on the environmental end, which I don't think people anticipated unless it was staged, and that was going to be the last hurdle. But what are we looking at as far as something that is coming from you guys to say that it does not pose any real problem for cities like San Antonio?

Mr. HOLMSTEAD. We—I may have to get back to you with a specific date. I know that that project does call for a report. It takes some time to finish the report after the 3 week testing period, and what I can do is make sure that we provide you with a date by which we can get that report to you and to the officials in San Antonio.

Mr. GONZALEZ. That would be great. Thank you very much, Mr. Holmstead, and I don't have any further questions. I yield back.

Mr. HALL. A lot of times, we save the best for last. And I recognize Mr. Otter, the gentleman from Idaho.

Mr. OTTER. Well, thank you, Mr. Chairman. You can go ahead and talk as long as you want, if you are going to say things like that.

Mr. Chairman, I too appreciate calling this hearing. I am reminded of the great promise when we passed ISTEA and then TEA-21. I was then Lieutenant Governor of Idaho, and we were going to not only spend all that money, which we successfully did, and continue to do, but we were also going to have tremendous

streamlining. That was really, for us in the west, that are continually frustrated by either the Endangered Species Act or the EPA, or some other barrier to us being able to go forward with our projects, but you know, Mr. Nottingham, the last time we met, we met across the desk like this, only I was on the Transportation Committee, and as I recall, you were with the State of Virginia, I believe. How long ago was that? That was, what, 3 years ago, something like that?

Mr. NOTTINGHAM. Three and a half years ago, sir.

Mr. OTTER. Yeah. I—and I remember one of the things that we were working on was streamlining. Well, you know, the bad news is we haven't accomplished anything. The good news is is that we are still talking about it. So hopefully we are going to get something done. But what I am concerned about is at the time, when you were with the State of Virginia, you were there with the—then the Governor of New Jersey, who had recently replaced, then, the Director of the Environmental Protection Agency. And there was a couple of other folks there who had legitimate complaints about the inability of the Endangered—or the Environmental Protection Agency to be able to move forward with any degree of certainly, or at least consideration of time. In fact, as I recall, the Governor of New Jersey said that they had a turnpike that they had been trying to put in for about 10 years, and still hadn't gotten all the permits, because of a three-toed frog or some blade of grass or something. That frustrated their construction of that, yet they were killing 32 people a year that they figured that they could stop.

And the reason I remember that is because that is the same thing that is happening to me in Idaho. I have got one stretch in Idaho we call Blood Alley, because we kill 32 people a year up there on that. We have got $58 million sitting in the banks in Idaho, or at least we did at the time we had—you and I had our meeting—that were waiting for some bureaucrat somewhere to make a decision so that we could go forward with our construction project simply putting shoulders on the road, so that those cars, if they did run off the road, they at least had a chance of not wrecking and killing the people inside.

Do you, in your new capacity, do you see any hope for us being able to move forward? I have voted against every transportation bill because of the lack of streamlining in the bill. And I am going to vote against this one, unless we get some streamlining in it. So—and it doesn't mean much, because everybody else has got a big Christmas tree in there, and they are going to vote for it anyway, with or without the streamlining. Do you see any hope that we are going to be able to go forward legislatively, and if not, why couldn't we go forward administratively with some of this streamlining?

Mr. NOTTINGHAM. Thank you, Mr. Otter. I will say it is much easier commenting on the Federal Government from the State government perspective than it is from being within the Federal Government, but you raise some very serious and real issues. We have a strong, and this, today's hearing, touches on one very important, but fairly discrete sliver of the administration's overall environmental streamlining package that we have in our SAFETEA proposal. I will say, sadly, half or more has not made it into either

of the bills that have been moving over the last couple of years, for a number of reasons, but we really do hear everywhere we go, across the States, and in MPOs and DOTs, and in communities, the biggest frustration with transportation is why does it take so long to deliver solutions? And people are okay with the reality that, on occasion, the answer may well be don't build that project, because it is not the right project at the right place, for environmental and other reasons. People can accept that, but they don't like to wait 10 years——

Mr. OTTER. Yeah.

Mr. NOTTINGHAM. [continuing] to hear that, and all the money. So, we have a number of proposals, whether it is dealing with the National Environmental Policy Act, the Section 4(f), where occasionally we see the fact that a very minor, de minimis impact on a resource, a park, or a Federal land may trump all other environmental considerations, even if we can figure out a win-win——

Mr. OTTER. Yeah.

Mr. NOTTINGHAM. [continuing] in other ways.

Mr. OTTER. Pardon me for interrupting you, but I got one more question, and I want to get into Mr. Holmstead before my time runs out. I thank you for your answer. Mr. Holmstead, if it had been a U.S. trucking company that was in violation of the clean air standard, you would have shut them down. Why can't we shut down the Mexican trucks coming into the United States?

Mr. HOLMSTEAD. Well, the——

Mr. OTTER. Wouldn't you have shut them down?

Mr. HOLMSTEAD. The answer is that the Mexican trucks who come to the country are not in violation of any standards.

Mr. OTTER. That isn't what Mr. Gonzales indicated.

Mr. HOLMSTEAD. No. He suggested there was some concern about the emissions coming across the border, but that doesn't mean that they are violating any standards. GPA does not regulate vehicles that are produced and purchased and domiciled in another country. We are working with the Mexican government to harmonize their standards with ours, and we believe that they will do that, even though it may take a few years behind our schedule. But they are not in violation of any standards.

Mr. OTTER. I thank you, Mr. Chairman. I see my time is up.

Mr. HALL. All right. I thank you, and I thank this panel very much. We will release you gentlemen now, and ask the second panel to come forward, if they would. And we thank you very, very much.

Okay. We are honored to have the second panel before us today, and we have Mr. Michael Clifford, who is the Director of Systems Planning Applications, Department of Transportation Planning, also a member of the Transportation Research Board and the Institute of Transportation Engineers. We are very pleased to have him.

We have Ms. Annette Liebe, who is Manager of the Oregon Department of Environmental Quality's Air Quality Planning section, and a former staff attorney at the Environmental Defense, Inc. fund.

We also have Mr. Michael Replogle, Transportation Director for Environmental Defense, author of many, many publications in

transportation policy and planning, and several books, and we are honored to have him.

We have Brian Holmes, who is Executive Director of the Maryland Highway Contractors Association. He is an incorporator of the National Wetlands Coalition, Chairman of the Nationwide Public Projects Coalition.

And we are honored to have you, and we recognize, at this time, Mr. Clifford, for 5 minutes. You have been patiently here most of the day, and you know the rules. Take as much time as you really have to have. Be as brief as you feel like you ought to be. Thank you.

Mr. CLIFFORD. Thank you very much, sir.

I would like to submit my written testimony for the record.

Mr. HALL. And without objection, you all may do that.

STATEMENTS OF MICHAEL CLIFFORD, DIRECTOR, SYSTEMS PLANNING APPLICATIONS, METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS, ON BEHALF OF THE ASSOCIATION OF METROPOLITAN PLANNING ORGANIZATIONS; ANNETTE LIEBE, MANAGER, AIR QUALITY, OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY, AIR QUALITY DIVISION, ON BEHALF OF STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS AND ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS; MICHAEL REPLOGLE, TRANSPORTATION DIRECTOR, ENVIRONMENTAL DEFENSE; AND BRIAN HOLMES, EXECUTIVE DIRECTOR, MARYLAND HIGHWAY CONTRACTORS ASSOCIATION, ON BEHALF OF AMERICAN ROAD AND TRANSPORTATION BUILDERS ASSOCIATION

Mr. CLIFFORD. Thanks. Good afternoon, Mr. Chairman and members of the subcommittee. I am Michael Clifford, Director of Systems Planning Applications for the National Capitol Region Transportation Planning Board. This Board is the metropolitan planning organization, or MPO, for the Washington, DC region. I am testifying today on behalf of the Association of Metropolitan Planning Organizations, AMPO, and in particular, as a member of AMPO's Air Quality workgroup.

AMPO is a national association of MPOs, with membership from 200 metropolitan areas across the country, in air quality nonattainment and maintenance areas, MPOs have primary responsibility for ensuring that transportation plans and programs do their fair share to achieve and maintain the Federal air quality standards to protect the health of our citizens. Accordingly, we are pleased to have this opportunity to provide our perspective regarding the conformity provisions contained in H.R. 3, and I thank you for holding this hearing.

I would like to begin by saying that we support the changes to the transportation conformity program, as proposed in Section 1824 of the bill. The changes would allow MPOs to better utilize resources, and therefore, to better conduct metropolitan planning, while continuing to work with air management agencies to improve air quality in these metropolitan areas.

First, AMPO supports the proposal that conformity of transportation plans and programs be determined every 4 years. Because

conformity must be determined before new programs or new plans are adopted, many areas, including here in the Washington, DC region, begin an update at about the same time as conformity requirements are met for the previous one. It is basically a year round, continuous conformity process.

Second, AMPO supports the proposed change to provide a 2 year timeframe for redetermining conformity once triggered by a State implementation plan, or a SIP. This represents an additional 6 months beyond the current 18 months requirement, thus allowing more time for MPOs to integrate conformity determinations with the proposed 4 year frequency cycle.

Third, AMPO applauds the provisions in H.R. 3 that would change the time horizons for conformity determinations, so that air quality and transportation planning timeframes are more similar. Under the current requirements, conformity must be demonstrated for the last year of the transportation plan, which is at least 20 years from the date of analysis. In contrast, SIPs are focused on a shorter term attainment date, and do not have to forecast the emissions and trends to any time beyond that point. The provisions in H.R. 3 would tie these two planning horizons much more closely together.

Fourth, I would like to emphasize AMPO's support for the transportation control measure, or TCM, substitution provisions in the bill. This would allow MPOs working with air quality agencies and EPA to revise or substitute new TCMs without a formal SIP revision.

Last, I wish to express my support for the language that provides a formal definition of a conformity lapse. AMPO prefers this statutory definition, as it removes ambiguity that might lead to uneven application across the country.

In conclusion, I believe these conformity provisions would more closely align the air quality and transportation planning processes, resulting in better transportation planning, fewer delays, and continued progress toward meeting our clean air goals.

Thank you for your time, and the opportunity to speak before this subcommittee.

[The prepared statement of Michael Clifford follows:]

PREPARED STATEMENT OF MICHAEL CLIFFORD, DIRECTOR, SYSTEMS PLANNING APPLICATIONS, NATIONAL CAPITAL REGION TRANSPORTATION PLANNING BOARD, METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS ON BEHALF OF THE ASSOCIATION OF METROPOLITAN PLANNING ORGANIZATIONS

Good afternoon, Mr. Chairman and members of the Subcommittee. I am Michael Clifford, Director of Systems Planning Applications for the National Capital Region Transportation Planning Board, the Metropolitan Planning Organization (MPO) for the Washington, DC region. I am testifying today on behalf of the Association of Metropolitan Planning Organizations (AMPO), of which my MPO is an active member, and in particular as a member of AMPO's Air Quality Work Group.

AMPO is a national association of MPOs with membership from 200 metropolitan areas in the country. In nonattainment and maintenance areas, MPOs have primary responsibility for ensuring that transportation plans and programs do their fair share to achieve and maintain the federal air quality standards and protect the health of our citizens.

Accordingly, we are pleased to have this opportunity to provide our perspective regarding the conformity provisions contained in H.R. 3, and I thank you and the members of the Subcommittee for holding this hearing.

I would like to begin by saying that we support the changes to the transportation conformity program in the Clean Air Act as proposed in Section 1824 of H.R. 3. The

changes would allow MPOs to better utilize resources and, therefore, to better conduct metropolitan planning, while continuing to work with air quality agencies to improve air quality in the nation's metropolitan areas.

First, AMPO wholeheartedly supports the proposal that conformity of transportation plans and programs be determined every 4 years in nonattainment and maintenance areas. Currently, MPOs in nonattainment and maintenance areas must demonstrate conformity of plans every three years and transportation improvement programs (TIPs) every two years.

Because conformity must be determined before new TIPs or new plans are adopted, many areas, including here in the Washington, DC region, begin a TIP update at about the same time as conformity requirements are met for the previous one. When you also consider that a conformity determination is often triggered by a TIP or Plan amendment, or a state implementation plan (SIP) trigger, the reality is that a continuous conformity process is in place in many metro areas. Many MPOs, especially high-growth areas like this region, report to AMPO that they budget for at least one conformity determination per year.

For example, the North Central Texas Council of Governments (NCTCOG) in the Dallas-Fort Worth area performs one conformity analysis per year because of TxDOT's transportation plan and TIP modifications. The Southeastern Wisconsin Regional Planning Commission (SWRPC) in the Milwaukee area performed four conformity determinations in the 2003-3004 timeframe.

What can be expected to improve by this change to a four-year frequency schedule is the ability of planners to focus on issues just as important to metropolitan areas as air quality. It is not simply technical staff time that is required for a conformity determination. Conformity also requires numerous interagency consultation meetings, public hearings, and the full engagement of MPO board members. MPOs must choose where to focus their limited planning resources, and elected MPO board members must choose where to focus their available time.

AMPO members believe that long- and short-term transportation planning will improve if metropolitan areas have more time to devote to it, rather than continuously determining conformity as many now do. A strengthened planning process could evolve when the concern about short-term deadlines for conformity is lessened.

This has been borne out at AMPO meetings, where MPOs in areas without conformity requirements and areas where conformity is not a frequent activity report that they are freer, from a resource perspective, to undertake activities such as scenario planning, enhanced public participation, and other innovative measures, than are MPOs conducting conformity every year.

The changes proposed in H.R. 3 will not negatively affect local air quality, because conformity must still be determined before an updated plan or TIP is adopted; air quality impacts will still be analyzed before any major changes to the transportation network are made, and a new SIP motor vehicle emissions budget would still trigger a conformity determination.

Secondly, AMPO supports the proposed change to provide a two year timeframe for redetermining conformity after an adequacy finding or approval of a motor vehicle emissions budget in a state implementation plan. This represents an additional six months beyond the current 18 month requirement, thus allowing more time for MPOs to integrate conformity determinations with the proposed four year frequency cycle I just addressed.

SIP updates occur on a discretionary basis, rather than on a regular cycle as do transportation plans and TIPs. Because of that, conformity triggers are unpredictable. The current 18-month SIP trigger requirement has caused uncertainty in the transportation planning and TIP development processes. The additional six months in your bill would improve the process by removing some of the pressure to demonstrate conformity in a short amount of time. It would also provide a measure of certainty in the period after SIPs are due for the new 8-hour ozone and fine particulate standards, which will begin in 2007. These SIPs will establish the first motor vehicle emissions budgets under those new standards.

Third, AMPO applauds the provisions in H.R. 3 that would change the time horizons for conformity determinations so that air quality and transportation planning timeframes are more similar. Under the current requirements, conformity must be demonstrated for the last year of the transportation plan, which is at least 20 years from the date of analysis. In contrast, SIPs are focused on a shorter-term attainment date and do not have to forecast emissions and trends to any time beyond that point.

For many 8-hour ozone nonattainment areas, for example, the attainment year, and thus the last year of analysis in the SIP, will be 2010. After an area reaches attainment, a maintenance plan must be developed and put in place that looks for-

ward for a period of just 10 years. In contrast, conformity determinations being done today forecast transportation-related emissions until at least 2025.

Because transportation agencies need to demonstrate conformity at least 20 years out to the last year of the plan, transportation sources are constrained to the SIP's motor vehicle emissions budget from the attainment year to the last year of the transportation plan, unless the SIP specifically establishes emissions budgets for years after the attainment date. In practice, few SIPs do this.

The mismatch in the timeframes for transportation and air quality plans has placed a burden on the transportation sector where there are very few emission controls remaining for implementation that will yield notable emissions reductions. This is especially true as vehicles continue to get cleaner due to the phase-in of federal emission and fuel standards. In 20 years, each mile of travel from a given vehicle will be cleaner, but this also means that each mile of travel reduced will result in a much smaller emission benefit. Longer-term emission problems will require solutions from every emission sector, and the way to ensure they are all looked at is to harmonize the planning timeframes so that all sources of emissions are on the table, not just the transportation sector.

The provisions in H.R. 3 would tie these two planning horizons much more closely together. The conformity determination would look forward at least 10 years from the first year of the TIP or plan timeframe, and even further if a regionally significant project will not be completed until after that time. These provisions would still ensure that transportation investments do not cause or contribute to air quality violations. And because the proposal calls for conducting a regional emissions analysis for any years of the transportation plan that extend beyond this timeframe, planners will have advance notice if future transportation demand results in emissions that are likely to worsen air quality.

Fourth, I would like to emphasize AMPO's support for the transportation control measure (TCM) substitution provisions in the bill. The conformity regulations require that MPOs implement in a timely manner any TCMs identified in the SIP. If a particular TCM fails to advance on schedule or perform as intended, revising, adding, or substituting a new TCM currently requires a formal SIP revision, with its attendant time requirements of development and EPA approval. This time period would typically be a minimum of 12 months.

AMPO supports the language in the Bill that would allow MPOs, working with air quality agencies and EPA, to revise or substitute new TCMs with equivalent emission reductions, and timeframes for those reductions, without a formal SIP revision.

Our desire for this change stems from the fact that transportation agencies are extremely reluctant to use TCMs now. This is because the success of many TCMs is dependent upon changes in human behavior and other variables beyond the MPO's influence; for other TCMs, funding that allows timely implementation may fail to materialize. If the emission reductions fail to accrue as predicted, the MPO is liable.

For example, the Metropolitan Transportation Commission (MTC) in the San Francisco Bay Area was sued in 2001 for a TCM that was included in its 1982 SIP, but not amended or revised to reflect current conditions. The court held that, even though MTC was not taking emission credit for the TCM, it is obligated to implement the measure regardless of changed circumstances. The suit was eventually concluded more in favor of MTC, but the resultant delays impeded both the transportation planning and air quality planning processes. Other MPOs are understandably reluctant to agree to TCMs for this very reason.

The Bill would provide for a more efficient and timely TCM substitution process, which would provide MPOs with more assurances that TCMs are a viable emission reduction strategy to use in the SIP.

Lastly, I wish to express my support for the language that provides a formal definition of a conformity lapse. AMPO prefers this statutory definition as it removes ambiguity that might leave discretion to EPA or the courts, and uneven application across the country.

In conclusion, I believe these conformity provisions would more closely align the air quality and transportation planning processes, resulting in better transportation planning, fewer delays, and continued progress toward meeting our clean air goals.

Thank you for your time and the opportunity to speak before this Subcommittee.

Mr. OTTER [presiding]. Thank you, Mr. Clifford. Ms. Liebe.

STATEMENT OF ANNETTE LIEBE

Ms. LIEBE. Good afternoon, Mr. Chairman, and members of the subcommittee. My name is Annette Liebe, and I am manager of the Air Quality Planning section for the Oregon Department of Environmental Quality. I am here today testifying on behalf of STAPPA and ALAPCO, the two national associations of air quality officials in 53 States and territories, and over 165 major metropolitan areas.

We are here today because transportation remains a dominant source of air pollution across the Nation. These emissions contribute to premature mortality, reduced lung function, cancer, and other serious health and environmental problems. Although we continue to make great progress in reducing emissions from mobile sources, it is clear that benefits from cleaner cars and trucks cannot keep pace with trends of steadily increasing vehicle miles traveled.

Our associations are acutely aware of the key role that transportation plays in our Nation's economy. We also believe that transportation conformity and the congestion mitigation air quality improvement programs are critically important to the goal of achieving full integration of environmental and transportation decision-making. For this reason, our associations have adopted a set of CMAC and transportation conformity principles for the reauthorization of transportation legislation. A copy of our principles is attached to our written statement.

With respect to transportation conformity, our associations strongly believe that the purpose of the program, which is to ensure that the emissions from transportation plans, programs, and projects stay within the capacity of an airshed, is absolutely crucial to achieving clean air goals. Unless this purpose is achieved, it will be necessary to call upon other source sectors, potentially including small businesses, to further reduce emissions.

We believe conformity is working well, and endorse preserving the major conformity requirements and schedules that are now in place. Accordingly, we are troubled that the proposed changes to transportation conformity in recent Senate and House legislation, including H.R. 3, could seriously impair the ability of States and localities to protect public health and welfare. We believe, however, that the air quality provisions of the House bill are preferable to those in the Senate. We are most concerned with proposals to shorten the planning horizon for the transportation plan from 20 years to 10 years. In planning for clean air under the Clean Air Act, we must not only chart a course for achieving healthful air quality, but also for maintaining it over the long-term, 20 years into the future once we meet the standards. Major transportation investments can have huge air quality impacts, much of which may not occur for several decades. These investments can also significantly promote sprawl and growth. Therefore, long term planning over at least a 20-year period, is necessary to ensuring that air quality impacts are identified and appropriate adjustments are made early.

While both the Senate and House legislation seek to shorten the time period, we prefer the language in H.R. 3, since it would require concurrence by the air pollution agency before the time pe-

riod is reduced, as well as an emissions analysis to track air quality impacts. We believe that as it is currently structured, conformity provides ample flexibility to States to accommodate individual needs and circumstances, while maintaining the integrity of the program. Rather than statutory changes, we believe that State and local officials should retain the flexibility to work through a robust interagency consultation process to resolve issues addressing their unique circumstances.

We strongly support the congestion mitigation air quality improvement program, and believe that it also can be strengthened in several ways. Since CMAC was originally established, our understanding of transportation-related emissions and their impact on public health and welfare have expanded significantly. EPA has adopted new health-based standards for fine particulate matter and ozone, and we are beginning to develop air quality plans to meet these standards. Accordingly, we urge that the areas eligible to receive CMAC funding be expanded, consistent with the recommendations included in our written testimony.

For example, areas like Portland, Oregon, that are close to violating the standards, should be eligible to receive CMAC funds in order to avoid becoming a nonattainment area. We also support a substantially increased Federal commitment of resources to the CMAC program to reflect the true and very significant impact of transportation-related emissions on public health and welfare. This increase should be no less proportionately than that to be provided for highway investments.

Finally, we recommend that concurrence of State and local air quality agencies be required for CMAC project selection through a well-defined consultation process. In Oregon, the Department of Environmental Quality has participated in selecting CMAC projects through the ongoing interagency consultation process that we established under our conformity rule.

Thank you for the opportunity to testify, and I am available to answer any questions.

[The prepared statement of Annette Liebe follows:]

PREPARED STATEMENT OF ANNETTE LIEBE, MANAGER, AIR QUALITY PLANNING, OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY ON BEHALF OF THE STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS AND THE ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS

Good afternoon, Mr. Chairman and members of the Subcommittee. I am Annette Liebe, Manager of the Air Quality Planning Section of the Oregon Department of Environmental Quality. I am testifying today on behalf of STAPPA—the State and Territorial Air Pollution Program Administrators—and ALAPCO—the Association of Local Air Pollution Control Officials—the two national associations of air quality officials in 53 states and territories and over 165 major metropolitan areas. The members of STAPPA and ALAPCO have primary responsibility under the Clean Air Act for implementing our nation's air pollution control laws and regulations and, moreover, for achieving and sustaining clean, healthful air for our citizens. Accordingly, we are pleased to have this opportunity to provide our perspectives on (1) the proposed changes to the Clean Air Act's transportation conformity provisions contained in H.R. 3, the "Transportation Equity Act: A Legacy for Users," and (2) the Congestion Mitigation and Air Quality Improvement (CMAQ) program under this legislation.

STAPPA and ALAPCO are acutely aware of the key role that transportation plays in our nation's economy. We endorse the fundamental principle that transportation and environmental goals need not be at odds with one another, but, rather, that our transportation system can flourish and our economy can grow without jeopardizing

the health of our citizens and the environment. In fact, our transportation choices can make important contributions to health and environmental improvements.

Today, however, transportation remains a dominant source of air pollution across the country, contributing substantially to unhealthful levels of ozone, particulate matter (PM) and carbon monoxide (CO). In particular, according to the U.S. Environmental Protection Agency (EPA), these sources are responsible for over 40 percent of volatile organic compounds and more than 50 percent of nitrogen oxides—both of which are ozone precursors—and about a third of fine particulate matter emissions and 70 percent of CO emissions. Transportation sources are also very significant contributors of greenhouse gases—including over a third of carbon dioxide emissions—and toxic air pollutants, and play a role in the formation of regional haze. Although EPA's standards for light-duty and heavy-duty vehicles will contribute to making great progress in reducing emissions from mobile sources, it is clear that the benefits of these technological advances can not keep pace with current and foreseeable trends of steadily increasing vehicle miles traveled (VMT).

New research linking vehicle emissions to serious and adverse health effects on children and other sensitive populations further supports the need for effective transportation conformity and CMAQ programs. This research shows that:

1) children attending schools located adjacent to freeways suffer an increased prevalence of asthma and bronchitis;
2) children exposed to higher levels of motor vehicle-related pollutants experience a permanent, life-long reduction in lung function compared to children living in cleaner air; and
3) children who die of cancer before age 16 were far more likely to have been exposed to vehicle pollution as a fetus because the mother resided within 1 kilometer of a highway during and after pregnancy.

STAPPA and ALAPCO firmly believe that the transportation conformity and CMAQ programs are critically important to achieving full integration of our environmental and transportation decision-making processes and ensuring that transportation choices do not undermine our efforts to sustain clean, healthful air throughout the country. Air pollution control is a zero-sum calculation. To the extent we are not able to achieve the appropriate cost-effective emissions reductions from transportation sources, we will have to resort to more costly alternative control measures from some other industrial sources, including small businesses.

Our associations have adopted a set of transportation conformity and CMAQ principles for the reauthorization of transportation legislation and prepared a comparison of the air quality provisions of proposed House and Senate legislation from last Congress. Both are attached to this testimony.

Transportation Conformity

STAPPA and ALAPCO remain firmly committed to the purpose of transportation conformity, which is to ensure that shorter-term Transportation Improvement Programs (TIPs) and long-term Regional Transportation Plans (RTPs) contribute to the timely attainment and maintenance of healthful air quality and achieve the motor vehicle emissions budgets contained in State Implementation Plans (SIP) for air quality. We believe that conformity can continue to be implemented as currently written and intended.

In numerous areas, the conformity process has facilitated good working relationships between state and local air quality and transportation officials by requiring consultation and coordination among agencies. The process has made air quality and transportation planners more aware of each others' objectives; resulted in the inclusion in TIPs and RTPs of additional projects that benefit air quality; and opened up the SIP development process to more input from the transportation community. Clearly, this has been the case in Oregon. STAPPA and ALAPCO believe that we must continue to strive for such successes across the country. Moreover, our associations strongly believe that the purpose of conformity—to ensure that transportation plans and programs support healthful air quality—is fundamental to the goal of achieving clean air, especially given the continued increase in motor vehicle use and transportation's contribution to poor air quality in many areas throughout the country.

STAPPA and ALAPCO believe that the Clean Air Act's transportation conformity program is working and strongly endorse preserving the major requirements and schedules that are now in place. However, we are troubled that proposed changes to transportation conformity in recent Senate and House legislation, including H.R. 3, could seriously weaken the program and undermine the ability of states and localities to attain and maintain national ambient air quality standards. We believe, however, the most problematic provisions are included in the Senate bill, and

strongly urge the House to reject them. Our major concerns with the proposed bills follow.

First, our associations are extremely concerned that both Senate and House proposals seek to shorten the period of emissions analysis used to determine whether a long-range plan conforms to the SIP. Under each proposal, the plan's conformity determination would be based on a 10-year horizon, rather than the current 20-year horizon. We strongly oppose such a change, but believe the House provision is less problematic to the conformity program than the Senate proposal.

Long-term planning, over a 20-year horizon, is imperative to ensuring that the potential growth in mobile source emissions is identified, the impact on air quality is assessed and, where necessary, adjustments are made. In planning for clean air, state and local air agencies must not only chart a course for achieving healthful air quality, but also for maintaining it over the long term. Shortening the timeframe over which a transportation plan is required to demonstrate conformity is extremely troubling to us because it takes only the first part of our responsibility—attaining an air quality standard—into account, and disregards our responsibility for maintaining clean air over the subsequent 20 years.

Major transportation projects can have huge air quality impacts, much of which may not occur during the first ten years when the new highway has not yet been filled to capacity. The greatest emissions impact of a new highway often occurs after the first ten years when the resulting development corridor is fully developed and the facility is again jammed with stop-and-go traffic. If we eliminate the responsibility to account for the impact of transportation investments beyond 10 years, then we lose the opportunity to hold these projects accountable for their long-term contribution to air pollution, and severely compromise our ability to adequately protect public health.

Accordingly, STAPPA and ALAPCO strongly oppose the Senate provisions mandating a shorter planning horizon of 10 years, with no flexibility to account for local needs. While we are also disappointed that the House bill allows the conformity decision to be based on 10 years, we still find it preferable, since it does not mandate a shorter planning horizon, but instead allows conformity to be based on emissions during the first ten years only with the agreement of the air pollution control agency. We also support the provision in the House bill requiring an emissions analysis for the additional years in the transportation plan even if the emissions in the outyears are not used for conformity purposes. This will alert the transportation and air quality planners to possible future air quality problems and provide an opportunity to address them during the period of the next update of a transportation plan before the future conformity violations cause a conformity lapse.

Second, STAPPA and ALAPCO are also concerned with proposals reducing the frequency of conformity determinations for transportation plans from every three years to every four years, and eliminating the requirement for conformity determinations on the TIP, currently conducted every two years. Our associations oppose these changes, but believe they will have much less impact on the conformity process if the House language regarding long-term emissions analyses is adopted.

Third, we believe that regular and timely analyses must be maintained to demonstrate compliance of financially constrained TIPs and RTPs with SIP motor vehicle emission budgets. Such continued frequency will ensure that sound data are generated and allow for the timely adjustment of motor vehicle emissions estimates. The longer the delay between emissions estimates, the longer emissions can grow in excess of the emissions budgets planned for in the SIP to attain and maintain the standards. If a violation of SIP budgets grows too large before it is discovered, it not only will prevent attainment of the health-based air quality standards, but may also become too difficult to correct through the transportation process within a reasonable period of time. This may result in emission increases that cannot be offset by transportation control strategies in time to meet the statutory deadlines for reasonable progress or attainment of the health-based standards. In those situations, the failure of conformity will likely force additional emissions reductions from stationary sources to achieve the overall reductions required for attainment.

In recognition of the desire of transportation officials to improve the alignment of conformity timelines, STAPPA and ALAPCO recommend that the frequency of the conformity analysis on the TIP and the RTP be synchronized. The House bill requires synchronized determinations. The Senate bill does not.

Fourth, we are concerned with provisions of the Senate and House bills allowing projects to be funded during a conformity lapse. The current conformity program does not restrict project funding during a lapse for projects that reduce emissions or do not increase emissions. Both the Senate and House bills expand these exemptions considerably. The Senate bill allows all but the largest "regionally significant projects" to continue to be funded for an indefinite period during a conformity lapse,

and does not require that emissions be reduced to comply with the SIP. The House bill allows all projects, including "regionally significant projects," to continue to be funded during a conformity lapse, but limits the time period when projects may be funded to 12 months, and requires transportation agencies to revise their plans and take corrective actions to conform to the SIP budgets.

STAPPA and ALAPCO oppose expanding the current list of exemptions to include projects that increase emissions. We believe this will exacerbate the exceedance of SIP emissions budgets and make corrective action more difficult and expensive. However, of the two proposals, we prefer the provision in H.R. 3, since it limits the time period and requires corrective actions.

Fifth, STAPPA and ALAPCO strongly oppose the provision in the Senate bill that eliminates emissions budgets in currently approved ozone SIPs until new plans for the 8-hour ozone standard are submitted. EPA has already rejected this concept, concluding that if the current SIP budgets were set aside—as the Senate bill allows—ozone-forming emissions from motor vehicles in major metropolitan areas could increase significantly. According to EPA in its latest conformity rulemaking (69 Fed Reg, pp 40026-27, July 1, 2004), vehicle emissions:

> could increase anywhere from 10 to 50% of the 1-hour budgets, and because motor vehicles represent a quarter to a half of all emissions in most metropolitan areas, the total emissions in an airshed could increase to the point where areas cannot attain the 8-hour standard.

We are concerned that this provision could seriously impair the ability of states and localities to attain and maintain the 8-hour ozone standard. Consequently, we support the House on this issue and strongly recommend that you reject the Senate language.

Finally, we are concerned that the Senate and House bills contain language that conflicts with the Clean Air Act by potentially allowing non-conforming projects in PM_{10} and $PM_{2.5}$ nonattainment areas to be included in the TIP. The Clean Air Act requires that no project cause or contribute to a violation of national ambient air quality standards. The Act also requires that projects come from transportation plans and improvement programs that do not cause violations of the NAAQS. But the language in both bills would allow a transportation improvement program (TIP) to be approved even if it includes projects that cause violations of the PM_{10} and $PM_{2.5}$ standards. It appears that this language has simply been carried forward from the 1998 law without addressing the conflict with the Clean Air Act. To avoid confusion and possibly conflicting interpretations of the provisions with the Clean Air Act, the language needs to be removed from the bills.

As we mentioned, our associations believe transportation conformity is working. We believe it is well worth the effort it requires, given the benefits that will follow in terms of public health and implementation of smart-growth policies. In addition, we believe that conformity as it is currently structured provides ample flexibility to states and localities to accommodate individual needs and circumstances, while maintaining the integrity of the program. Rather than statutory changes to such elements as planning horizons, analysis frequency and grace periods, STAPPA and ALAPCO believe that state and local officials should retain the flexibility to resolve issues in the way that works best at the state and local level. This may involve revising the emissions budget in a SIP in one area, adding transportation control measures to a TIP in another area or extending the air quality planning horizon in yet another area. In each case, the state and local officials can develop the best solutions for their jurisdictions through a strengthened interagency consultation process.

Congestion Mitigation and Air Quality Improvement (CMAQ) Program

STAPPA and ALAPCO strongly support the CMAQ program, which provides a discrete source of funding set aside for transportation projects that meet air quality objectives and for projects that result in sustainable air quality improvement. The CMAQ program appropriately reinforces the interrelationship between the transportation and air quality planning processes by specifically recognizing and funding projects designed to reduce the transportation sector's impact on air quality. Over the past 10 years, states and localities have demonstrated that CMAQ can play a significant role in addressing transportation-related air quality problems. We believe, however, that this important program can be strengthened in several ways.

First, since CMAQ was originally established, understanding of the scope and magnitude of transportation-related emissions and their impact on air quality has expanded significantly. EPA has adopted new, health-based National Ambient Air Quality Standards (NAAQS) for fine particulate matter and 8-hour ozone, and states are now beginning to prepare State Implementation Plans to demonstrate attainment of these standards. A National-Scale Air Toxics Assessment concluded that

motor vehicles are the largest source of hazardous air pollutants nationwide, producing nearly 1.4 million tons of air toxics each year.

While STAPPA and ALAPCO believe CMAQ funds should be apportioned based on the severity of an area's air quality problem, we urge that the areas eligible to receive CMAQ funding be expanded from 1-hour ozone, PM_{10} and CO nonattainment and maintenance areas, to also include $PM_{2.5}$ and 8-hour ozone nonattainment and maintenance areas; areas nearing nonattainment; areas whose transportation-related emissions have an impact on a nonattainment area; and areas that experience other air quality problems as a result of transportation-related emissions, including, but not limited to, hazardous air pollutants from mobile sources.

Accordingly, we believe that the historic allocation of CMAQ funds is inadequate. We strongly urge a substantially increased federal commitment of resources to the CMAQ program, to reflect the true and very significant impact of transportation-related emissions on air quality. This increase should be no less, proportionately, than that to be provided for other highway investments.

In Oregon, CMAQ funds have been used to implement transportation control measure commitments in numerous maintenance plans. Some examples include expansion of transit service and programs, support of transit-oriented development, implementation of commuter trip-reduction programs, expansion of bicycle and pedestrian facilities and the purchase of advanced equipment to remove winter road sand that could contribute to PM_{10}. In order to meet the challenges of implementing new standards to protect public health, we believe funding should increase for these types of projects and be available for areas committed to making progress to maintain healthful air.

With respect to project eligibility, we urge that greater emphasis be placed on projects that will result in direct, timely and sustained air quality benefits. Certain types of congestion mitigation projects, such as road and bridge construction and expansion, may have the long-term effect of promoting growth in VMT and urban sprawl, and of creating new congested corridors. We also recommend that to qualify for CMAQ funds, a project should be required to demonstrate that a minimum air quality benefit threshold is met or exceeded, based on established criteria and supporting data, and with the concurrence of the appropriate state and/or local air quality agency. This concurrence should occur through a well-defined consultation and concurrence process. In Oregon, the Department of Environmental Quality has participated in selecting CMAQ projects through the ongoing interagency consultation process that we established under our conformity rules.

Conclusion

In its policy on transportation and air quality, the National Governors' Association states:

> With the enactment of the Clean Air Act Amendments of 1990, the Intermodal Surface Transportation Efficiency Act of 1991, and the Transportation Equity Act for the 21st Century, Congress took steps to advance two essential national goals: achieving air quality standards and providing for the transportation needs of the American people. The Governors strongly support the attainment of both of these goals and believe that neither should be sacrificed in pursuit of the other.

STAPPA and ALAPCO embrace this perspective, as well. We look forward to working with members of this Subcommittee as discussions regarding transportation conformity and CMAQ continue.

Thank you for this opportunity to testify.

Comparison of Air Quality Provisions of S. 1072, the *Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2004* (February 26, 2004)

and

H.R. 3550, the *Transportation Equity Act: A Legacy for Users* (April 2, 2004)

Prepared by the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials

May 10, 2004

Earlier this year, the U.S. Senate and the U.S. House of Representatives passed comprehensive transportation legislation, including authorization, for six years, of funds for federal transportation programs. Both bills—S. 1072, the *Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2004,* and H.R. 3550, the *Transportation Equity Act: A Legacy for Users*—include provisions that will amend the Clean Air Act as well as transportation law. In particular, the bills substantially

change current law and/or requirements for transportation conformity, the Congestion Mitigation and Air Quality Improvement (CMAQ) program and other programs with air quality impacts.

Below is a comparison of key air-related provisions of the Senate and House bills. For each issue noted, STAPPA and ALAPCO have identified their preference between the two bills.

Transportation Conformity

Over the past decade or so since it has been implemented under the Clean Air Act (CAA), transportation conformity has proven to be a key tool for ensuring that our transportation choices contribute to—rather than undermine—progress toward achievement of healthful air quality. Further, as our nation prepares to implement new, health-based National Ambient Air Quality Standards (NAAQS) for 8-hour ozone and fine particulate matter ($PM_{2.5}$), the critical need to continue implementing conformity as it is currently structured is clear.

Both the Senate and House bills contain provisions that would severely weaken transportation conformity. Though the conformity provisions of the two bills differ, both would substantially reduce the transportation sector's accountability for the pollution it creates, threatening the failure of state and local air pollution clean-up plans and unfairly forcing states and localities to respond by placing a greater pollution clean-up burden on other sectors of the economy. Because transportation emissions account for half of all ozone precursors and a large portion of $PM_{2.5}$ in most metropolitan areas, reducing the accountability of the transportation sector will seriously jeopardize the ability of states and localities to achieve and sustain clean air and public health goals. Given these significant adverse impacts, STAPPA and ALAPCO would strongly prefer that the final transportation bill that emerges from Congress not include any changes to the transportation conformity program and, instead, preserve the conformity program requirements and schedules currently in place. For this reason, the associations generally prefer the House bill, which shows greater restraint in relaxing the conformity program.

Conformity Horizon for Transportation Plans

Senate—S. 1072, sec. 1615(b)(4) (pp. 272-273), reduces from 20 years the planning horizon over which conformity must be demonstrated by defining a transportation plan as limited to the longer of 1) the first 10 years of the transportation plan adopted pursuant to 23 USC § 134(g), 2) the latest date for which the State Implementation Plan (SIP) establishes an emissions budget or 3) the year after the completion date of a regionally significant project that requires approval before the "subsequent conformity determination."

House—H.R. 3550, sec. 1824(c) (pp. 374-376), continues to require that conformity be demonstrated through the last year of the transportation plan (i.e., for 20 years) except in areas where the metropolitan planning organization (MPO) and air pollution control agency agree to reduce the horizon. In such cases, the bill does not shorten the planning horizon by defining the term of the transportation plan, but instead requires a conformity determination for the "period ending" in the later of 1) the tenth year of the transportation plan, 2) the attainment date or 3) the year following completion of a project that will be programmed in the Transportation Improvement Program (TIP) or receive approval before the subsequent conformity determination. The requirement that the conformity determination must address the period prior to the horizon date requires a showing that the area will conform during the period in addition to a projection of conformity for the latest horizon date. H.R. 3550 also requires an emissions analysis for the years of the transportation plan that extend beyond the horizon date used for the conformity demonstration. S. 1072 does not include a counterpart provision.

STAPPA/ALAPCO Recommendation—STAPPA and ALAPCO's strong preference is that the existing 20-year conformity horizon be retained; neither bill provides for this. Of the two bills, we believe the House bill—which allows for a shorter horizon only with the agreement of the air pollution control agency, and requires an emissions analysis for the additional years in the transportation plan beyond the 10-year horizon date—is preferable.

Transition to New Air Quality Standards

Senate—S. 1072, sec. 1616 (pp. 276-278), amends CAA requirements and EPA regulations that govern the methods for determining conformity before an emissions budget is available to implement a new NAAQS. These changes would allow an 8-hour ozone nonattainment area that currently has a 1-hour ozone budget to stop conforming to that budget and, instead, authorize EPA to establish "other" tests to determine conformity.

House—H.R. 3550 has no counterpart provisions.

STAPPA/ALAPCO Recommendation—In November 2003, EPA proposed a change to its transportation conformity regulations to create an option similar to that in the Senate bill, to allow areas not to comply with emissions budgets in approved SIPs during the multi-year hiatus before new emissions budgets are adopted to implement the 8-hour ozone NAAQS. STAPPA and ALAPCO opposed this proposed regulatory change in December 22, 2003 comments to EPA, explaining that removal of existing budgets will allow much higher emissions during the interim period prior to the development of new ozone SIPs, and that substantial deterioration in air quality will occur during that period. STAPPA and ALAPCO continue to hold this view and, therefore, believe the House bill is preferable. If, however, the Senate provision is used as the basis for the conference bill, it should be revised to maintain the use of currently approved emissions budgets by allowing EPA to prescribe an alternative conformity test only if the state has not already adopted an emissions budget for ozone. For example, at the beginning of sec. 1616(3)(A)(ii) (p. 277), add "*if no such budget, as described in 3(A)(i) above, has been found adequate or has been approved*,".

Frequency of Transportation Plan and TIP Conformity Determinations

Senate—S. 1072, sec. 1615(a) (pp. 268-269), reduces the frequency of conformity determinations for the TIP and Regional Transportation Plan (RTP) in nonattainment and maintenance areas from at least every three years (under current law) to every four years, unless the MPO elects to redetermine conformity more frequently or a conformity "trigger" is pulled. The Senate bill also reduces the frequency of updates to the TIP—from every two years to every four years, unless the MPO elects to update more frequently—and the RTP—from every three years to every four years in nonattainment and maintenance areas and to every five years in attainment areas that have never been designated nonattainment, unless the MPO elects to update more frequently; the TIP and the RTP are not required to be updated on the same schedule.

House—H.R. 3550, sec. 1824(b) (pp. 373-374), reduces the frequency of conformity determinations for the TIP and RTP in nonattainment and maintenance areas from at least every three years (under current law) to every four years, unless the MPO elects to redetermine conformity more frequently or a conformity "trigger" is pulled. Under secs. 5213(g) (p. 831) and 5213(h) (p. 836), the bill also reduces the frequency of updates to the TIP and RTP to every four years in all cases, unless the MPO elects to update more frequently.

STAPPA/ALAPCO Recommendation—STAPPA and ALAPCO have suggested synchronizing conformity determinations on and updates to the TIP and RTP, to occur at least every three years; both bills, however, go further in reducing frequency. Of the two bills, we believe the House bill is preferable.

Triggers for Conformity Determinations

Senate—S. 1072, sec. 1615(b) (pp. 270-272), revises the "triggers" for redetermining conformity to allow for less frequent conformity determinations. The current trigger of SIP submittal is replaced under subparagraph (2)(E)(i) with EPA's adequacy determination of a submitted budget, which typically comes four to five months after SIP submittal. Under subparagraph (2)(E)(ii), the current trigger of SIP approval if a SIP adds, deletes or changes TCMs, is replaced with SIP approval if the budget has not yet been used for a conformity determination. The bill also extends the grace period after which MPOs must conduct a triggered conformity redetermination for the TIP and RTP from not later than 18 months after a trigger to not later than two years after.

House—H.R. 3550 contains counterpart provisions in sec. 1824(a) (pp. 372-373), except that the second trigger is based on EPA approval or promulgation of a SIP that establishes a motor vehicle emissions budget (MVEB) where none previously existed or that "significantly varies" from a budget that had taken effect as a result of an adequacy determination or a prior SIP approval.

STAPPA/ALAPCO Recommendation—STAPPA and ALAPCO have advocated for retention of the existing triggers and the 18-month grace period; both bills deviate from this. The difference between the two bills, with respect to the second trigger, is that the Senate bill would allow the two-year grace period clock to restart before the conformity determination is conducted, while the House bill would only restart the two-year clock if the budget in the approved SIP differs from the prior budget. Of the two bills, we believe the House bill is preferable.

Conformity Lapse Grace Period

House—H.R. 3550, sec. 1824(e) (pp. 378-379), enacts a 12-month grace period following a conformity failure, during which an area can amend its transportation

plan, if necessary, to modify the project list or add TCMs sufficient to achieve emissions levels required by the MVEB in the applicable SIP.

Senate—S. 1072 has no counterpart provisions.

STAPPA/ALAPCO Recommendation—The House addition of a 12-month grace period to delay the effect of a conformity lapse after a transportation plan or program is found to be inconsistent with the air quality plan would inappropriately allow transportation projects to move forward even after it is determined that the transportation plan or program is at odds with the air quality plan. STAPPA and ALAPCO, therefore, prefer the Senate bill.

Limiting Conformity to Regionally Significant Projects

Senate—S. 1072, sec. 1615(b) (pp. 273-275), defines the term "transportation project" as used in CAA § 176(c)(2)(C) to mean only a "regionally significant project" or a change to a project that makes it regionally significant. The CAA prohibits DOT from funding or approving any "transportation project" unless it comes from a conforming RTP and TIP. The new definition of "transportation project" changes the applicability of the conformity provisions of CAA § 176(c)(2)C) from all projects in a conforming plan or TIP to only those that are regionally significant or that make a significant revision to an existing project. Therefore, non-regionally significant projects could be approved, accepted or funded during a conformity lapse when the plan or TIP does not conform.

S. 1072 also amends every use of the term "project" by adding "transportation" to bring it under the new definition of "transportation project" as regionally significant. This language narrows the scope of CAA § 176(c)(3)(B)(ii), regarding carbon monoxide, to exempt from conformity those projects that create a CO hotspot if they are not regionally significant.

House—H.R. 3550 has no counterpart provisions.

STAPPA/ALAPCO Recommendation—STAPPA and ALAPCO prefer the House bill because the Senate bill would allow large numbers of projects to evade conformity review, thereby allowing projects to be funded even if they would contribute to a conformity lapse.

Conformity of Projects Listed in the TIP

Senate—S. 1072, sec. 3006 (pp. 598-599), reenacts the transportation planning provisions of 23 USC § 5303 (g)(4)(D)(iii) by requiring that projects listed in the TIP conform under the CAA if they are located in an area designated nonattainment for ozone or carbon monoxide. However, under this language, projects in PM_{10} or $PM_{2.5}$ nonattainment areas that do not conform under the CAA may be still included in the TIP project list and, therefore, funded.

House—H.R. 3550 contains a counterpart provision in sec. 6001 (p. 857).

STAPPA/ALAPCO Recommendation—This provision, which is limited to ozone and carbon monoxide, appears to create a conflict with CAA § 176(c), which requires that conformity apply to any area designated nonattainment for ozone, carbon monoxide or PM, and to ozone, carbon monoxide or PM areas that are now designated attainment but which were previously nonattainment. This provision should be deleted. If the provision is retained, however, it should be 1) amended to also include all nonattainment areas for any particulate matter standard and 2) expanded to include all former nonattainment areas redesignated to attainment, so as to avoid a repeal by implication of the scope of conformity in CAA § 176(c).

Congestion Mitigation and Air Quality Improvement Program

STAPPA and ALAPCO strongly support the CMAQ program, which provides a discrete source of funding explicitly set aside for transportation projects that meet air quality objectives and for projects that result in sustainable air quality improvement. The CMAQ program appropriately reinforces the interrelationship between the transportation and air quality planning processes by specifically recognizing and seeking to ameliorate the transportation sector's impact on air quality. Since 1991, when the program was established, it has been demonstrated that CMAQ can play a significant role in helping states and localities address transportation-related air quality problems.

Our associations believe, however, that this important program should be strengthened in several ways: 1) by requiring the concurrence of state and local air quality agencies for CMAQ project evaluation and selection; 2) by expanding the areas eligible to receive CMAQ funding; 3) by placing greater emphasis on projects that will result in direct, timely and sustained air quality benefits; and 4) by substantially increasing the federal commitment of resources to the CMAQ program, to reflect the true and very significant impact of transportation-related emissions on air quality.

Role of Air Quality Agencies in the Evaluation and Selection of CMAQ Projects

Senate—S. 1072, sec. 1613 (p. 266), requires the U.S. DOT Secretary to "encourage States and metropolitan planning organizations to consult with State and local air quality agencies in nonattainment and maintenance areas on the estimated emission reductions from proposed congestion mitigation and air quality improvement programs and projects."

House—H.R. 3550 has no counterpart provisions.

STAPPA/ALAPCO Recommendation—STAPPA and ALAPCO have advocated strongly that state and local air pollution control agencies be given a "concurrence" role in the evaluation and selection of CMAQ projects; neither bill provides for this. Of the two bills, we believe the Senate bill—which, at least, encourages consultation on estimated emission reductions—is preferable.

Addition of Areas Eligible for CMAQ Funding

Senate—S. 1072, sec. 1611 (pp. 261-263), expands areas eligible to receive CMAQ funding to include $PM_{2.5}$ (in addition to ozone and carbon monoxide) nonattainment and maintenance areas. By continuing to refer generally to "ozone" nonattainment and maintenance areas, the bill also allows 8-hour ozone nonattainment and maintenance areas to be eligible for CMAQ funding.

House—H.R. 3550 has no counterpart provisions.

STAPPA/ALAPCO Recommendation—STAPPA and ALAPCO believe that areas eligible to receive CMAQ funding should be expanded to include not only 8-hour ozone and $PM_{2.5}$ nonattainment and maintenance areas, but PM_{10} nonattainment and maintenance areas as well. The associations further believe that CMAQ eligibility should be extended to areas nearing nonattainment; areas whose transportation-related emissions have an impact on a nonattainment area; and areas that experience other air quality problems as a result of transportation-related emissions, including, but not limited to, hazardous air pollutants from mobile sources. Neither bill provides for expansion to this extent. Of the two bills, we believe the Senate bill—which expands eligibility for CMAQ funding to $PM_{2.5}$ and 8-hour ozone nonattainment and maintenance areas—is preferable. We urge that the language be revised to also ensure the eligibility of PM_{10} nonattainment and maintenance areas.

Expansion of Projects Eligible for CMAQ Funding to Include Transportation Systems Management and Operations

Senate—S. 1072, sec. 1701 (pp. 293-300), expands the scope of projects eligible for CMAQ funding to include those that "improve transportation systems management and operations" without any showing that such projects will improve air quality. The broad definition of "transportation systems management and operations" includes, among others, such projects and activities as traffic detection and surveillance, work zone management, electronic toll collection, roadway weather management and traveler information services, all of which are unrelated to improving air quality.

House—H.R. 3550 contains counterpart provisions in sec. 1202 (pp. 118-119).

STAPPA/ALAPCO Recommendation—The provisions included in both bills would inappropriately open the limited funds available for CMAQ to projects unrelated to air quality. STAPPA and ALAPCO urge that they be deleted.

Authorization of CMAQ Funds

Senate—S. 1072, sec. 1101, authorizes $13,435,344,394 over six years (2004-2009) for the CMAQ program.

House—H.R. 3550, sec. 1101, authorizes $9,388,989,000 over six years (2004-2009) for the CMAQ program.

STAPPA/ALAPCO Recommendation—Funding for CMAQ in FYs 1998 through 2003 was $8,122,572,000. STAPPA and ALAPCO believe the historic allocation of CMAQ funds is inadequate to address transportation-related air quality problems that exist now and that will exist in the future. The associations have advocated that overall funding of the CMAQ program should be increased significantly to reflect the expanding scope and magnitude of transportation-related emissions and their impact on air quality, and to accommodate new $PM_{2.5}$ and 8-hour ozone nonattainment areas. Of the two bills, we believe the Senate bill—which provides a greater increase in CMAQ funding—is preferable.

Other Issues

TCM Substitution

Senate—S. 1072, sec. 1617 (pp. 278-282), establishes a procedure for adding or substituting TCMs in the SIP. Although the bill allows for the addition or replacement of TCMs, provided the substituted measures achieve equivalent or greater

emission reductions and are implemented on a schedule consistent with that for TCMs in the SIP, the bill specifically does not provide any agency with the lead role, and does not provide the air pollution control agency with even a concurrence role in determining whether a TCM should be substituted and, if so, what the substitute measure(s) should be. Instead, the Senate bill merely provides air agencies with a general role in a "collaborative process" and a concurrence role only with respect to determining the equivalency of the substitute or additional measure(s). In addition, Subparagraph (B), regarding adoption of substitute or additional TCMs, could force a state to change its SIP even if it is adequate for attainment. Subparagraph (D) eliminates the conformity mechanism in current law for ensuring that TCMs are funded and implemented.

House—H.R. 3550, sec. 1824(d) (pp. 376-378), also includes provisions for TCM substitutions, but expressly states that the state "may" (versus "shall") approve the changes to its SIP and requires the MPO to determine that funding is available in the TIP to ensure implementation of the new TCMs.

STAPPA/ALAPCO Recommendation—Although STAPPA and ALAPCO support the concept of TCM substitution, the associations do not believe legislative action is necessary or appropriate. However, of the two bills, we believe the House bill—which corrects many of the deficiencies of the Senate bill—is preferable.

Integration of Natural Resource Concerns into State and Metropolitan Transportation Planning

Senate—S. 1072, secs. 1501(a)(1)(A)(ii) and 1501(b)(1)(A)(ii) (pp. 152-153), adds "minimizing adverse health effects from mobile source air pollution" to the list of planning factors for MPO and state long-range transportation plans that MPOs are not required to consider (because judicial review is barred even if the factors are not considered at all). In addition, the bill adds a new paragraph (f)(2) to §§134 and 135, allowing the MPO or state to "determine which of the factors described in paragraph (1) are most appropriate for the metropolitan area to consider." This provides more explicit authority for planning agencies to disregard any factors they determine are not "appropriate."

House—H.R. 3550 has no counterpart provisions.

STAPPA/ALAPCO Recommendation—The Senate provisions are highly problematic because 1) MPOs and states are granted discretion not to consider the adverse health effects of mobile source air pollution and 2) if the health effects of air pollution are considered to encompass the emissions regulated under conformity, then the bar against judicial review could be held to bar judicial review of MPO or state conformity determinations. STAPPA and ALAPCO, therefore, prefer the House bill.

Transportation Project Development Process

Senate—S. 1072, sec. 1511 (pp. 180-184), adds a new § 326 to 23 USC. Paragraphs (f)(7) and (g)(6) allow U.S. DOT, as the lead agency, to determine whether air quality, water quality, species and habitat protection, transportation and land use plans are appropriate for consideration in determining the purpose and need for a project. As written, the new language inappropriately allows the lead agency discretion to disregard "environmental protection plans," which could include, among other things, SIP requirements for TCMs.

House—H.R. 3550 has no counterpart provisions.

STAPPA/ALAPCO Recommendation—STAPPA and ALAPCO prefer the House bill. If, however, the Senate provisions are used as the basis for the conference bill, they should be revised—in both (f)(7) and (g)(6)—to ensure that consideration of and compliance with applicable environmental, land use and other plans adopted to protect community resources are not discretionary. For example, the language of (f)(7) and (g)(6) should be amended to read *FACTORS TO CONSIDER—The lead agency will ensure that the following factors and documents are considered and complied with in determining the purpose of and need for a project.*

STAPPA/ALAPCO

CMAQ and Transportation Conformity Principles for Reauthorization of TEA-21

October 1, 2002

Transportation is the dominant source of air pollution in our nation, posing a significant threat to public health. The State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials

(ALAPCO) endorse the fundamental principle that transportation and air quality goals should be harmonized to ensure that our transportation choices contribute to improving our environment. As we seek to reduce transportation-related emissions, we recognize the critical importance of the Congestion Mitigation and Air Quality Improvement (CMAQ) program, long-term air quality/transportation planning processes and close collaboration and cooperation between air quality and transportation agencies in harmonizing air quality and transportation goals. As the Transportation Equity Act for the 21st Century (TEA-21) undergoes reauthorization, STAPPA and ALAPCO urge that opportunities for enhancing these programs and processes be explored.

Congestion Mitigation and Air Quality Improvement Program

STAPPA and ALAPCO strongly support the CMAQ program, which appropriately reinforces the interrelationship between the transportation and air quality planning processes by specifically recognizing and seeking to ameliorate the transportation sector's impact on air quality. Over the past ten years, it has been demonstrated that CMAQ—which provides a discrete source of funding explicitly set aside for transportation projects that meet air quality objectives and for projects that result in sustainable air quality improvement—can play a significant role in helping states and localities address transportation-related air pollution problems. As CMAQ undergoes review as part of the reauthorization of TEA-21, STAPPA and ALAPCO offer the following principles for enhancing the program:

Role of Air Quality Agencies in CMAQ Project Selection

- State and local air quality agencies must have a more defined and consistent role in the evaluation and selection of CMAQ projects.
- The concurrence of state and local air quality agencies must be required for project selection, through a well-defined consultation and concurrence process.

Increase in CMAQ Funds and Expansion of Areas Eligible to Receive Funding

- The historic allocation of CMAQ funds is inadequate to address transportation-related air quality problems that exist now and that will exist in the future. Therefore, overall funding of the CMAQ program should be increased, to reflect the expanding scope and magnitude of transportation-related emissions and their impact on air quality, and in anticipation of new $PM_{2.5}$ and 8-hour ozone nonattainment areas.
- CMAQ funding should be apportioned based on the severity of an area's air quality problem and its population.
- The types of areas currently eligible to receive CMAQ funding (i.e., 1-hour ozone, PM_{10} and CO nonattainment and maintenance areas) should be expanded to include $PM_{2.5}$ and 8-hour ozone nonattainment and maintenance areas.
- Areas eligible to receive funding should also include:
  - areas nearing nonattainment;
  - areas whose transportation-related emissions have an impact on a nonattainment area; and
  - areas that experience other air quality problems as a result of transportation-related emissions, including, but not limited to, hazardous air pollutants from mobile sources.

Project Eligibility

- Greater emphasis should be placed on projects that will result in direct, timely and sustained air quality benefits; criteria for substantiating such benefits should be established and data to support the quantification of such benefits should be required.
- Certain types of congestion mitigation projects (e.g., road and bridge construction and expansion) may have the long-term effect of inducing growth in vehicle miles traveled and urban sprawl, and of creating new congestion corridors. CMAQ funding should be shifted away from such projects unless there is a demonstration that these projects will result in sustained air quality benefits.
- To qualify for CMAQ funds, a project should be required to demonstrate that a specified minimum air quality benefit threshold is met or exceeded, based on established criteria and supporting data; such a threshold should be determined with the concurrence of the appropriate state and/or local air quality agency.
- Funding eligibility criteria and guidance should be more clearly defined to meet the above objectives.
- To the extent that these project eligibility criteria are followed, states and localities should then have discretion in determining which qualifying projects receive funding.

Project Funding Beyond Three Years

- Project funding beyond three years should be allowed and decided on a case-by-case basis and contingent on a demonstration of need and continuing air quality benefit.
- Such extended project funding should be phased out over time.

Transportation Conformity

Implementation of transportation conformity as Congress envisioned it in Section 176(c) of the Clean Air Act Amendments of 1990 has only begun to occur within the last few years. Delays in establishing motor vehicle emissions budgets resulted in the unintended consequence of protracted use of the less-than-perfect build/no-build test for determining conformity. However, now that motor vehicle budgets are in place in nonattainment areas, STAPPA and ALAPCO firmly believe that conformity can be implemented as intended, and that its purpose—to ensure that shorter-term Transportation Improvement Programs (TIPs) and long-term Regional Transportation Plans (RTPs) contribute to the timely attainment of healthful air quality and are consistent with (i.e., conform to) the motor vehicle emissions budgets contained in the State Implementation Plan (SIP) for air quality—can be fulfilled with increasing success.

Because the conformity of transportation plans to air quality plans is critical to achieving clean air goals—particularly given the continued increase in motor vehicle use and vehicle miles traveled—preserving the conformity requirements and schedules now in place is crucial. Specifically, STAPPA and ALAPCO recommend the following:

Frequency of Conformity Determinations

- Regular and timely analyses to demonstrate compliance of constrained TIPs and RTPs with SIP motor vehicle budgets must be maintained. Such continued frequency will ensure that sound data is generated and allow for the timely improvement of motor vehicle emissions estimates. The result will be improved air quality and timely progress toward attainment of the NAAQS and other air quality goals.
- To better harmonize timelines, conformity analyses on the TIP and the RTP should be synchronized and conducted no less frequently than once every three years.
- In addition, the 18-month SIP "trigger" for determining conformity must be maintained.

Planning Horizon

- The 20-year planning horizon for transportation plans must also be retained. Such long-range planning is imperative to ensuring that the potential for growth in mobile source emissions is identified, the impact on air quality is assessed and adjustments to transportation plans are made accordingly.

Mr. OTTER. Thank you very much. Mr. Replogle.

STATEMENT OF MICHAEL REPLOGLE

Mr. REPLOGLE. Yes. Thank you, Mr. Chairman. I am Michael Replogle, and I am Transportation Director of Environmental Defense, representing our 400,000 members.

Despite progress in cleaning up air pollutions, half of all Americans still live with dirty air. This pollution exacts a real toll, contributing to asthma, lung cancer, heart disease, and tens of thousands of premature deaths, at the cost that the Federal Highway Administration has estimated at more than $40 billion a year, more than the entire Federal transportation budget. I include in my testimony a summary of recent studies on these health effects. Even tomorrow's cleaner cars and trucks will emit a large portion of the smog-causing pollutants, and remain a leading source of air pollution for years to come, and that is because Americans are driving more and more.

Conformity is a key tool that helps us to control the pollution that contributes to these programs. It helps us keep unanticipated growth in traffic and pollution from motor vehicles from causing re-

gional air pollution control strategies to fail, as has happened repeatedly in the past. Conformity has also spurred broader political support for cleaner vehicles, fuels, and maintenance programs, strategies that have helped to curb traffic and pollution growth, with better travel choices.

Proposed changes to conformity threaten to undo this progress, and to weaken a key tool designed to help State and local air pollution officials manage vehicle emissions on a long term basis. The result will be that air quality will deteriorate, and there will be fewer options for controlling pollution. Not only will the health of our citizens suffer, but other sources, at greater cost, may be forced to implement emission reductions that proper transportation planning could have avoided.

We urge you not to upset the existing clean air and public health protections built into our transportation programs. Both H.R. 3 and last year's Senate transportation bills include provisions that weaken these protections, although in most cases, H.R. 3's provisions are less damaging. The most preferable action Congress can take is to reaffirm the existing law with no changes. We urge you to reject any efforts to add new provisions that would weaken clean air protections during the conference negotiations.

A Senate proposal to cut the conformity analysis horizon for transportation plans from 20 to 10 years would allow officials to ignore, until it is too late, the growth of air pollution set in motion by developing new highways, which often take more than a decade to be fully seen. In 15 years, only six metro areas have faced problems meeting the 20-year test, and in every case, added long-term pollution controls, or changing transportation plans, has solved these problems. The only reason to change this planning horizon for conformity would be to disregard the long term consequences of added roads to force other sources, like the electric utility industry, or the auto industry, to incur the costs of correcting those consequences.

H.R. 3 is less damaging than the Senate proposal, because it would continue the 20-year requirement, except in areas where the metropolitan planning organization and air pollution control agency agree that the horizon, which agree to reduce the horizon, and that allows local needs to be taken into account, and other safeguards to be adopted.

The Senate proposal would also narrow the scope of conformity, so it would apply only to regionally significant projects, rather than to the entire transportation program and plan. It would exempt smaller projects from requirements to consider local pollution hot spots and cumulative impacts. It would allow large investments in polluting projects during a conformity lapse, worsening the violation of emission budgets. Thankfully, H.R. 3 has no counterpart provision. A Senate proposal would also allow transportation agencies to modify transportation control measures and SIPs without oversight from environmental agencies, weakening the integrity of those SIPs, and leading to their failure. H.R. 3 corrects some of those deficiencies.

Current law requires updating conformity for areas with unhealthful air quality every 3 years for long range transportation plans, which matches and synchronizes with the 3 year milestone

compliance demonstration requirements, by which EPA can ensure timely updates to air quality plans. The Senate bill and H.R. 3 propose a 4-year cycle, and H.R. 3 would add to this a 1-year grace period before conformity lapse takes effect. These changes would undermine timely awareness and action to correct conflicts between transportation and air quality plans, contributing to more missed clean air deadlines.

Another Senate provision would set aside current limits on motor vehicle emissions in areas that violate the national ozone standard. Current emission budgets for these areas were approved by EPA a few years ago. The bill would not require new limits on motor vehicle emissions in these areas until new pollution control plans are submitted by the States to implement the new, more stringent ozone standard. And that is years off. According to EPA, that delay, when no emission budgets would be in effect, could allow motor vehicle emission increases of 10 to 50 percent above the current levels allowed. EPA concluded in a recent rulemaking that these large increases in emissions could prevent an area from ever meeting the new national health standard.

And finally, conformity has fallen short in one of its goals, and that is to encourage transportation plans to contribute to more timely attainment of healthful air quality. But there are regions that have shown progress in this area, and are finding ways to reduce pollution at no cost through better community designs that minimize traffic growth while maximizing travel choices. Salt Lake City, Sacramento, Denver, and Charlotte, and others, have recently built on the early success of Portland, Oregon in this area.

Recent reports by the Center for Clean Air Policy discuss some of the best practices and offer useful suggestions for how to improve clean air and transportation planning. I include these in my testimony, and commend these for your consideration.

Thank you.

[The prepared statement of Michael Replogle appears at the end of the hearing.]

Mr. HALL. I thank you, sir. The Chair recognizes Mr. Holmes.

STATEMENT OF BRIAN HOLMES

Mr. HOLMES. Mr. Chairman. Mr. Chairman, Ranking Member Boucher, I am Brian Holmes of the Maryland Highway Contractors Association, here today on behalf of the American Road & Transportation Builders Association. We appreciate this opportunity to discuss the Clean Air Act transportation conformity provisions of H.R. 3.

At the outset, please know that we share your interests in assuring that all Americans breathe clean air. We believe the conformity provisions in H.R. 3 are an important step in reaching that goal. Conformity is of critical importance to the transportation construction industry, which is why, over the past 5 years, ARTBA has been heavily involved in supporting government agencies in conformity related litigation.

Mr. Chairman, there are two points I hope the subcommittee will take away from today's hearing. First, government agencies and planning bodies need more flexibility on conformity. And second, the public, including those who build transportation projects for

government agencies, need more predictability in the transportation conformity process.

Right now, the conformity process is not flexible. Some have tried to turn it into an exact science, which it is not. Conformity determinations are based on assumptions and computer modeling. Look what happened when the Mobile Five model was replaced by the Mobile Six model. Most emissions were projected to decline, but there was an initial bump-up that threw a number of jurisdictions into nonattainment. As in any case where the margins of error can exceed the changes you are attempting to measure, there needs to be some leeway given to State and local governments. The process also has been made more rigid over the last 10 years by litigation brought by those opposing specific projects, or the notion of increased highway capacity.

H.R. 3 addresses these concerns, and we strongly support its proposals. H.R. 3 improves the flexibility of transportation conformity in the following areas, new triggers for conformity determinations, and conformity determination updates, time horizons for conformity determinations in nonattainment areas, and substitution of transportation control measures for conformity determinations in State implementation plans.

H.R. 3's 12-month grace period for existing projects in areas that have fallen out of attainment will allow already approved, environmentally sound projects to continue while State and government—State and local governments take actions to return to attainment. This application of flexibility and common sense is to be commended. Abruptly halting transportation projects after a finding of nonattainment is both costly and inefficient. The 1 year grace period will also cut down on lawsuits designed to delay and ultimately halt needed projects. The goal of H.R. 3's grace period could be additionally furthered by grandfathering, or the creation of other safe harbors for projects.

Conformity must be forward looking. Once a transportation project is in a conforming plan, it should be permanently grandfathered until it is either built or removed from the plan. Legislation to do that was introduced last Congress by Representatives Brady and Green, and cosponsored by Chairman Hall, along with others on this subcommittee. ARTBA urges Congress to introduce and pass that bill, H.R. 673, the Safe Highways and Roads Act. It is much needed legislation.

Fully supporting the reforms in H.R. 3, ARTBA invites the subcommittee to consider 3 measures to further improve the transportation conformity process. First, areas transitioning to new air quality standards should be allowed to use their existing motor vehicle emissions budgets until new emissions budgets are available. This avoids the need for project-specific conformity determinations, allows progress without unnecessary delay, and maintains adherence to existing environmental safeguards. This provision was contained in Senate 1072, SAFE-TEA, as passed by the Senate last session, and it deserves another look now.

Second, the gestation process for a highway project is so long and involved that there is a need for protection from unnecessary lawsuits in areas such as seeking judicial review of motor vehicle emission budgets. Also, when lawsuits do arise, there should be equal

participation for all interested parties, including contractors and transportation users. Third, the subcommittee might wish to consider a diesel retrofit program for diesel-powered construction equipment.

Mr. Chairman, Ranking Member Boucher, members of the subcommittee, ARTBA appreciates this opportunity to present testimony on this much needed legislation, and I look forward to answering any questions.

[The prepared statement of Brian Holmes follows:]

PREPARED STATEMENT OF BRIAN HOLMES, EXECUTIVE DIRECTOR, MARYLAND HIGHWAY CONTRACTORS ASSOCIATION ON BEHALF OF THE AMERICAN ROAD & TRANSPORTATION BUILDERS ASSOCIATION

Introductory Remarks

Good afternoon Mr. Chairman, Ranking Member Boucher and members of the Subcommittee. Thank you very much for providing the American Road & Transportation Builders Association (ARTBA) with the opportunity to present its views on the transportation conformity process and reform provisions related to it in H.R. 3, "The Transportation Act: A Legacy for Users."

I am Brian Holmes, executive director of the ARTBA affiliated Maryland Highway Contractors Association (MHCA). Prior to joining MHCA, I served 13 years as director of regulatory affairs for the Connecticut Construction Industries Association, also an ARTBA state affiliate. I am also privileged to serve as chairman of the Nationwide Public Projects Commission.

I am here today representing ARTBA, whose eight membership divisions and more than 5,000 members nationwide, represent all sectors—public and private—of the U.S. transportation design and construction industry. ARTBA, which is based in Washington, D.C., has provided the industry's consensus policy views before Congress, the Executive Branch, federal judiciary and the federal agencies for 103 years.

The transportation design and construction industry ARTBA represents generates $200 billion annually to the nation's Gross Domestic Product and sustains the employment of more than 2.5 million Americans.

I would like to say at the outset that ARTBA shares your interest in assuring that all Americans breathe clean air. We are not here today to suggest a radical overhaul of the conformity process. We would, however, like to suggest some badly-needed "fine-tuning" of federal law that will not only improve public health from a clean air perspective, but also improve the efficiency of making environmentally-sound and needed transportation investments.

General Background on the Clean Air Act and the Transportation Conformity Process

Under the federal Clean Air Act, the U.S. Environmental Protection Agency (EPA) regulates six criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, particulate matter (also known as soot and dust) and lead. For each pollutant, EPA has established minimal targets known as the National Ambient Air Quality Standards (NAAQS) that must be met by state and local governments.

If an area exceeds EPA's standards for any one of these "criteria" pollutants, it is designated a nonattainment area, triggering a series of steps that must be taken to come into compliance with the standards. In addition, for ozone, carbon monoxide and some particulate matter nonattainment areas, the EPA further classifies the area based on the magnitude of the nonattainment. These classifications are used to specify what pollution reduction measures must be adopted for the area and what deadlines must be met to bring the area into attainment.

Once an area is designated as nonattainment, the state must establish a State Implementation Plan (SIP) outlining how the state will come into compliance with EPA standards over a designated period of time. The SIP includes an emissions budget that shows allowable levels of emissions from three separate sources. They are stationary sources (i.e., power plants, factories), area sources (i.e., dry cleaners, gas stations) and mobile sources (i.e., cars, lawnmowers). The mobile source portion of the emissions budget is further subdivided to include a Motor Vehicle Emissions Budget (MVEB), which is the total emissions allowed for cars and trucks. Once this number is known, metropolitan planning organizations (MPOs) are charged with putting together both short-term Transportation Improvement Programs (TIPs) and long term Regional Transportation Plans (RTPs) that demonstrate projected emis-

sion that are less than the MVEB. Thus the TIP and RTP must fit within the constraints established by the SIP.

The transportation conformity process refers to the requirement set forth in Section 176 of the Clean Air Act that air emissions generated by transportation projects match or "conform" to emissions budgets established in state air quality plans. If the TIP does not conform with the SIP, the area is deemed to be out of conformity. If an area is out of conformity, federal highway funds are cut off. As a result, an area's TIP cannot include highway or transit transportation construction projects that will accommodate transportation anticipated to result in emissions that exceed the MVEB.

Transportation Sector Successes in Achieving Cleaner Air

Mr. Chairman, there's no doubt that we have made great progress over the past 30 years in improving the nation's air quality. Much of this progress has been achieved through technology advancements spurred by motor vehicle emissions standards and controls and cleaner motor fuels. According to a report recently released by the Environmental Protection Agency entitled "Air Emissions Trends, Continued Progress Through 2003," emissions from highway vehicles were dramatically reduced between 1970 and 2003. Specifically, carbon monoxide emissions were reduced by 64 percent, volatile organic compounds—a precursor to ozone—were reduced 74 percent, particulate matter (PM-10) emissions declined 61 percent, and nitrogen oxide (NOx) emissions went down by 42 percent. These numbers are even more remarkable given that since 1970, the U.S. population has grown more than 39 percent, the number of licensed vehicles has increased about 90 percent and the number of vehicle miles traveled has increased 155 percent.

In addition, earlier this year, major automobile manufacturers announced a new generation of vehicles that are 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 after the engine, and monitoring all of these systems to ensure these minimal emission levels.

So you can see, Mr. Chairman, much of the progress that has been made in improving the nation's air quality, has come from the transportation sector.

Problems with the Conformity Process

Mr. Chairman, that leads me to my comments about the conformity process itself. There are two things I hope you take from this hearing today: (1) that government agencies and planning bodies need more flexibility on conformity; and (2) that the public—especially those who contract with government agencies to build transportation improvement projects—need more predictability in the transportation conformity process.

One of the major problems with the conformity process is that some have tried to turn it into an exact science, when it is not. Conformity determinations are based on assumptions and computer modeling. All you have to do is to look back at the predictions made during the enactment of the Clean Air Act Amendments of 1990 to understand that "modeling of future events" often does not reflect reality.

An example of this is EPA's transition from the Mobile5 model to the Mobile6 model for predicting future on-road emissions. In applying the new Mobile6 model to current data, regions are experiencing a substantial short-term increase in predicted emissions for some pollutants as compared to the Mobile5 model. While over the long term the Mobile6 model shows decreasing emissions, this could cause substantial problems for many areas and threaten a potential conformity lapse in the short term. Even though the data being entered into the models is the same, each shows significantly different outputs.

This problem is amplified by the fact that quite often transportation plans and the SIPs they are supposed to conform with are often out of sync with one another. This is largely due to the fact that transportation plans have very long planning horizons and have to be updated frequently, while most air quality plans have very short planning horizons and are updated infrequently. As a result, many of the planning assumptions that must be used for conformity determinations of transportation plans and programs are not consistent with the assumptions that were used in the air quality planning process to establish emissions budgets and to determine appropriate control measures. In other words, because the most recent planning data must always be used, an increase in emissions and possible conformity lapses can occur simply because the numbers or models relied on in the transportation plan are not the same numbers relied upon in the air quality plan.

Part of this is due to the fact that the priority of various transportation projects often changes and every time this occurs, the plan needs to be updated.

While many have suggested that the planning horizons should be brought more in sync with one another, another option would be to simply allow greater flexibility in the process, recognizing the inexact science involved.

Rather than requiring plans to conform to the "nth-degree," perhaps a 10 percent "cushion" should be allowed so that transportation planners would not have to amend their plans every time they want to add or subtract even a relatively insignificant project.

Such a cushion would also permit some differences in planning data or models and would allow a margin of error for modeling assumptions planning organizations make but have no real way of predicting with precision—such as economic growth or the current price of gasoline—even though such things have a substantial impact on future travel or the use of larger vehicles like SUVs.

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. As a result, the conformity process has become a top-heavy bureaucratic exercise that puts more emphasis on "crossing the t's and dotting the i's" rather than engaging the public in true transportation planning that is good for the environment and the mobility of a region's population.

Opening the Door to Unnecessary Litigation

Mr. Chairman, flexibility in the conformity process also has been constrained by litigation initiated over the past several years by parties opposed to individual transportation projects and/or the concept of increasing highway capacity. This litigation will only increase in light of the recently enacted EPA requirements for PM-2.5 and ozone.

In 1997, in *Sierra Club v. EPA*, the court said EPA could not continue the practice of allowing areas that are new non-attainment areas to have a one-year grace period before they need to perform a conformity test. In yet another court case in 1999 (Environmental Defense Fund v. EPA), the court struck down EPA's practice of "grandfathering" projects when a conformity lapse occurs. Up to this point, when an area went into a conformity lapse projects could proceed if they had already met all of the necessary environmental requirements and were part of a conforming transportation plan at the time of the lapse. In defending its own rule before the court, EPA stated:

> "EPA's rule reflects its rational judgment that Congress intended a more reasoned approach to transportation planning during periods in which there is no applicable SIP, that Congress intended that there be an attempt to balance the general pollution-reduction requirements of the Act with the needs of state and local planning organizations for certainty and finality in their transportation planning process."

42 U.S.C. 7506(c)(2). [*EDF v. EPA*, Case No. 97-1637, Respondent's Brief, June 10, 1998, p. 30.]

> "EPA explained that it 'has always believed that there should only be one point in the transportation planning process at which a project-level conformity determination is necessary. This maintains stability and efficiency in the transportation planning process.'"

[*EDF v. EPA*, Case No. 97-1637, Respondent's Brief, June 10, 1998, p. 36.]

Two other long-standing practices have also been struck down by the courts, which has reduced flexibility in the conformity process and deserve this subcommittee's attention:

- EPA is often not able to approve a state's motor vehicle emissions budget in time for a conformity determination to be made. Prior to the EDF v. EPA case mentioned above, these budgets were assumed to be automatically approved if EPA did not act within a certain period of time. That decision, however, struck down this long-standing practice.
- Many states have not been able to meet their ozone compliance deadlines since much of their clean air problem is the result of ozone drifting in from other areas, known as ozone transport. In the past, EPA has granted extensions to the deadline in some of these areas. However, in Sierra Club v. EPA (D.C. Cir. 2002), the court ruled that EPA does not have the authority to grant these extensions and must, instead, "bump" these areas into the next higher classification of nonattainment, which would trigger several additional mandatory control measures.

Without the flexibility option of "grandfathering" projects, we have seen a significant increase in conformity-related litigation. Those opposed to an individual project—or the mix of projects or modal funding in a transportation plan—have been given tremendous leverage by the EDF v EPA decision. They can now use conformity-related litigation as a sure way to temporarily, if not permanently, stop pre-

viously approved, environmentally sound projects and plans. Threatened with such litigation—or actually sued over conformity process-related issues—state and local planning agencies are put under enormous pressure to either give into the demands of the dissenting minority, or face endless rounds of litigation.

In response to this reality, ARTBA joined several other industry groups in 1999 to form Advocates for Safe and Efficient Transportation (ASET), a litigation group aimed at assisting governmental entities in defending the transportation planning and delivery process. While many of the professional environmental groups talk a lot about wanting a more "inclusive" transportation planning process, the fact of the matter is really quite different.

Since ASET was formed, it has spent hundreds of thousands of dollars, not in arguing the merits of many of these cases, but in battling with environmental groups over simply trying to get a seat at the table. I could provide you a pile of court briefs where groups like the Sierra Club argue adamantly that the construction labor organizations and industry should not have a say in the final decision about transportation plans. The truth is that the Sierra Club and many of their colleague organizations do not want an inclusive planning process. They want a process where they and they alone are allowed to influence the process.

When the planning process is allowed to be hijacked by any one individual group, bad decisions are made. The truth is that America needs a dynamic transportation network to meet the needs of a growing population and economy. Such a network should include improving public transit, increased utilization of synchronized traffic signalization and other "smart road" technologies, improving local management of traffic incidents to clear roadways quickly and adding road capacity where appropriate and desired by a majority of local citizens. This is key to reducing traffic congestion and the unnecessary auto, truck and bus emissions it causes. It is also essential to maintaining time sensitive ambulance, police and fire emergency response service.

On a related front, the Sierra Club recently initiated litigation which has temporarily halted a desperately needed highway improvement project on U.S. 95 in Las Vegas, Nevada. ARTBA, realizing the far reaching implications of this litigation filed a "friend of the court" brief supporting the United States Department of Transportation in the case. 1This type of litigation demonstrates that professional environmental groups will use any legislative loophole available to delay desperately needed transportation construction process. These actions on the part of the professional environmental community further show that the transportation planning process needs to be insulated from needless litigation.

Mr. Chairman, I believe very strongly in the transportation planning process—a process that involves public involvement by all stakeholders and final decisions that are made by public officials. However, we have come to a point where the planning process is breaking down under a mound of litigation.

The Human & Economic Costs of Delaying Transportation Improvements

Mr. Chairman, there are several very important reasons—often missing from the debate—for making sure that the transportation conformity process is reformed to limit its use by those whose aim is simply to obstruct transportation development:

- Unnecessary delays thrown in the way of transportation projects delay infrastructure improvements that can cut the harmful emissions and billions of dollars in wasted motor fuel caused by traffic congestion.
- Such delays drive up the ultimate construction cost for the project to the taxpayer. In this case, time certainly is money.
- Most importantly, however, they delay the initiation of infrastructure improvements that can save lives and prevent injuries. With more than 42,000 Americans dying each year on the nation's roadways, that should be a primary consideration. The fact is, one third more people die each year in motor vehicle crashes than die of bronchitis and asthma combined. Motor vehicle crashes are the leading cause of death of young Americans under the age of 25.

CHANGES TO THE TRANSPORTATION CONFORMITY PROCESS IN THE "TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS" (H.R. 3)

Mr. Chairman, provisions in H.R. 3 concerning transportation conformity address a number of the problems associated with the process and we strongly support these proposals.

Conformity Redeterminations

Section 1824(a) of H.R. 3 extends the requirement for new conformity determinations resulting from an EPA finding of adequacy or approval of a new MVEB to two

years. This is an improvement over the current regulations which require conformity determinations within 18 months. Again, this is a positive step.

Beyond this, what is needed is MVEB adequacy and regulatory flexibility. A 1999 court ruling struck down an EPA rule that conferred automatic MVEB approval if EPA did not act promptly and called into question EPA's overall process for approving MVEBs in submitted-but-not-yet-approved SIPs. Conformity obligations often arise with short notice due to changes in attainment status or failure of EPA to timely approve MVEBs or SIPs. Without an approved MVEB, conformity determinations cannot be found and transportation projects cannot be approved.

Frequency of Conformity Determination Updates

Section 1824(b) of H.R. 3 extends the timeline for determining conformity to every four years with all too frequent exceptions when an MPO chooses to update the plan or TIP more frequently or when SIP actions trigger a new conformity determination. This is an improvement over the current law, which requires conformity determinations every three years.

By extending the timeframe for conformity determinations, H.R. 3 cuts down on unnecessary requirements that do not have any analytical value unless there has been a major change in emissions.

Another method of dealing with this issue would be to require conformity updates only in instances where a changed TIP affects projected emissions by more than a set threshold amount.

A new conformity determination should not be required if one or several projects are added to the transportation plan or TIP, as long as the net emissions from their inclusion will not add more than three percent to projected transportation emissions in the plan. In reality, added transportation emissions that might be facilitated by a single highway project are minuscule. This would avoid what is largely a paperwork exercise.

Conformity determination should not be done simply for its own sake. It is a very intensive and rigorous process. Rather, it should only be required only when significant changes to the TIP warrant. H.R. 3, by extending the time frame for conformity determinations, is a good step in this direction.

Time Horizon for Conformity Determinations in Nonattainment Areas

Section 1824(c) of H.R. 3 limits conformity to the end of the maintenance period provided that the MPO and air quality agency agree. the "Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004" (S. 1072) as passed by the Senate last session, did not contain the requirement that the MPO and air quality agency agree. This is a more efficient approach, as *there should not be a need for the agreement of the MPO and the air quality agency here. If the maintenance period has ended, then conformity determinations should no longer be required.* By tying this decision to the agreement of the MPO and air quality agency, this provides an unwelcome opportunity for extension of the conformity requirements when they are no longer needed.

Section 1824(c) of H.R. 3 further provides that, in general, conformity findings must be based on the last (20th) year of transportation plans. It allows, with agreement of the MPO and applicable air quality agency, conformity findings to be based on the latest date of the 10th year of the transportation plan, the attainment date of the SIP, or the year after the completion date of a regionally significant project (if approval is required before a subsequent conformity determination). Regional emissions analysis must be done for the remaining years of the transportation plan.

While this enhanced flexibility is positive, H.R. 3 does not include provisions allowing for the imprecision of data inputs to be appropriately accommodated. As stated above, modeling is an inexact science at best. Requiring conformity to be demonstrated to the "nth" decimal point makes little sense from a public policy standpoint. *We recommend that, conformity should be allowed to be demonstrated if the emissions from the transportation plan are at least within 10 percent of the emissions budget. In addition, SIPs should contain an adequate "margin of safety" to avoid conformity lapses due to marginal changes in expectations.*

Substitution of Transportation Control Measures

Section 1824(d) of H.R. 3 allows the substitution of transportation control measures without a mandatory SIP revision under certain circumstances. This is a positive change that allows for alternate planning without triggering an unnecessary SIP revision process.

Lapse of Conformity

Section 1824(e) of H.R. 3 provides that "conformity lapses" will not take effect until 12 months for projects approved prior to a finding that an area is not within

conformity. This is a welcome relief from the rigidity of the conformity process allowing projects to continue while actions are taken to return to conformity. Abruptly halting transportation projects after a finding of nonattainment is both costly and inefficient. This reinstatement of the one-year grace period also will cut down on unnecessary lawsuits designed to delay and halt vitally needed transportation projects.

The goal of H.R. 3's grace period provision could be further accomplished by the restoration of grandfathering or the creation of other safe harbors for projects. Conformity must be forward-looking. Retroactive invalidation of projects after funding approval is counterproductive to smart growth and mobility considerations. Conformity lapses stop all projects, transit and highway alike, and puts construction crews out of work without notice. Once a transportation project is in a conforming plan, it should be permanently grandfathered until built or removed from the plan. Legislation introduced last congress by Representative Kevin Brady (R-TX) and Representative Gene Green (D-TX), and cosponsored by Subcommittee Chairman Ralph Hall (R-TX) and others this subcommittee, H.R. 673 "The Safe Highways and Roads Act", accomplished this goal.

The conformity provisions of H.R. 3 represent a significant step forward in improving the transportation conformity process.

ADDITIONAL CONFORMITY REFORM RECOMMENDATIONS FOR INCLUSION IN H.R. 3

While ARTBA fully supports the reforms contained in H.R. 3, the following measures should be considered in this legislation to further improve the transportation conformity process:

Allow Use of Existing MVEB's to Demonstrate Conformity

Areas transitioning into new air quality standards should be allowed to use existing MVEB's addressing the same pollutants or other emissions tests to demonstrate conformity before budgets are available. This avoids the need for project specific conformity determinations and allows the transportation process to proceed without unnecessary delay while adhering to existing environmental safeguards. This provision was contained in the "Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004" (S. 1072) as passed by the Senate last session.

Prohibit MVEB Judicial Review

Under existing regulations, EPA can declare a MVEB adequate for transportation planning purposes prior to approval of the entire SIP. This approval process is not as comprehensive as full SIP approval and EPA reserves the right to withdraw its approval at anytime (therefore, it is not a final agency action). Environmental groups have filed lawsuits alleging that preliminary MVEB approval must be as rigorous as final SIP approval and EPA has not contested jurisdiction in these lawsuits. (i.e., 1000 Friends of Maryland suit against EPA).

Provide Further Protection From Lawsuits

Planners have to rely on current state-of-the-art modeling and good faith estimates to develop air quality and transportation plans. Environmental groups are attacking the estimates and demanding exactitude that doesn't exist.

A requirement on plaintiffs to make an initial showing of bad faith before filing suit would allow only suits with some standard of merit to proceed. In the absence of such a showing, agreement by the MPO, state air quality agency, EPA and U.S. DOT should be per se evidence of the validity of emissions estimates. (Example: Sierra Club sued Sacramento for using EPA data). Almost 200 U.S. counties will face conformity for the first time under the revised ozone and particulate matter standards. They will not be able to develop "airtight" plans immediately, thus opening the door to lawsuits. These areas must be given adequate time (at least two years) and adequate resources to develop the detailed databases needed to demonstrate conformity. Smaller MPOs, in particular, are ill-prepared to fulfill all of the conformity requirements.

Ensure Private Sector Transportation Improvement Advocates Have Equal Intervention Rights

Environmental groups are using lawsuits to pressure policy makers and exclude other stakeholders. Contractors and transportation users should have the right to participate in lawsuits as equals to professional environmental groups. A double standard leads to duplicative lawsuits and moves the planning process out of the public forum and into the courtroom.

Conclusion

Mr. Chairman, Ranking Member Boucher, and other members of the subcommittee, ARTBA deeply appreciates having this opportunity to present testimony to you on this critical transportation issue. To summarize my comments:

- The nation is making huge progress on cleaning up the air, but almost all of this progress can be attributed to technology gains, not transportation control measures;
- Greater flexibility and predictability is needed in the transportation planning and conformity process;
- H.R. 3 takes several positive steps towards achieving a workable transportation conformity process that both benefits the environment and allows for needed transportation development.
- More must be done to put a stop to the endless litigation that is tying the transportation planning process into knots;
- Delaying transportation improvement projects results in unnecessary deaths and other negative costs to society.

Again, thank you. I look forward to any questions the Committee might have.

Mr. HALL. All right. I thank you very much. And I will start the questions, and I would ask Mr. Clifford, you state that MPOs without conformity requirements are freer to undertake activities such as scenario planning, enhanced public participation, and other innovative measures. How does being able to undertake these activities affect air quality goals and transportation planning?

Mr. CLIFFORD. Well, that is an example of some other planning activities that represent good methods. The point we were trying to make was we are spending possibly an inordinate amount of time with some of the conformity activities, by the fact that we do it throughout the year.

Mr. HALL. I am trying to find out if being able to undertake these activities doesn't benefit both air quality goals and transportation planning.

Mr. CLIFFORD. Yes, sir. That is really what we meant by that, to further the planning function.

Mr. HALL. Ms. Liebe, if I have read your testimony correctly, at the bottom, you say that ideally, Congress should do nothing with respect to conformity, but if it does, the House bill is better than the Senate bill. It seems like someone has testified that the Senate bill was better than the House bill. I don't want to get you into a debate here, but kind of give us your reasons for saying that.

Ms. LIEBE. Thank you, Mr. Chairman. The reasons why—the main reason we prefer the House version is the opportunity for air quality agencies to participate in the decisionmaking on whether or not emissions analysis is going to be conducted beyond the 10 years that is currently called for in the Senate bill. The House version allows that to be agreed upon only with the concurrence of the State air quality agency, and we really think it is critical that you look out 20 years, so that you can evaluate all of the future impacts of the facilities, as you are making the decisions on where to put your investment.

Mr. HALL. Mr. Replogle, did I say that right?

Mr. REPLOGLE. It is Replogle.

Mr. HALL. Okay. If I have read your testimony correctly, at the bottom, you say that ideally, Congress should do nothing with respect to conformity. But if it does act, the House bill is better than the Senate bill. You agree to that?

Mr. REPLOGLE. Yes. That is correct.

Mr. HALL. And in your testimony, you complain, though, that the Senate bill would reduce the planning horizon from 20 to 10 years. Now, does the House bill maintain the 20 year planning horizon?

Mr. REPLOGLE. Yes, it does, except when both the State and local agencies, and regional planning bodies all agree to you try and use a shorter horizon. So there is some flexibility in the House bill to adopt a shorter horizon, but in the default case, the 20 year planning horizon stays in place, and we think that that is preferable to the Senate's proposal.

Mr. HALL. And you have a Washington, DC example. Do I understand that example? Under existing law or under the law as amended by H.R. 3, Washington, DC is a nonattainable area?

Mr. REPLOGLE. Washington, DC has been a nonattainment area for decades, and has missed repeated clean air deadlines, in part, because it has underestimated the growth of motor vehicle pollution, and the fact that under current law, the need to review the transportation conformity every 3 years has, in fact, in the Washington region, just in the last several years, prompted additional pollution reduction measures to be taken by Maryland and Virginia and the District of Columbia, that has helped us to protect public health. And if the changes that are proposed in H.R. 3 or the Senate bill were—would have been law, those pollution reductions might not have been taken.

Mr. HALL. So what would it take to make the DC area an attainment area?

Mr. REPLOGLE. It will take additional steps to reduce pollution from all sources, motor vehicles and power plants, and other sources. There is a significant concern under the Senate bill that the Washington region is likely to approve a lot of new transportation projects, which will make it, in the next several years, which would make it far more difficult for the region to attain the health standards that have been put in place.

Mr. HALL. I thank you. My time is up. The Chair recognizes the gentleman from Virginia.

Mr. BOUCHER. Thank you, Mr. Chairman. And I want to express appreciation to our witnesses for informing us of their views this afternoon.

Your concerns have been well articulated here, and have been duly noted by us. The recommendations that you have made for changing the statutory language have been duly noted. I am not going to dwell on that in my question. We face a practical problem, and that is, the bill is going to the floor next week, and we need to make some decisions about what we are going to do about the matters we have discussed here today.

I perceive that each of you would probably prefer the House version of this legislation to the Senate. Some of you would prefer that we do nothing, that the Congress do nothing, and leave the situation as it is, but that is not likely to happen. We are probably going to have changes. I think you acknowledge that. And given that reality, let me just ask each of you, and this can be a simple yes or no, would you prefer the House version to the Senate version? I would like to get each of you to respond to that.

We will start with you, Mr. Clifford. And a simple yes or no is what I am looking for here.

Mr. CLIFFORD. The House version.

Mr. BOUCHER. Thank you. Ms. Liebe.

Ms. LIEBE. The House version. I also want to throw in that I really would like to recognize the work of this subcommittee, and of your staff, in coming up with H.R. 3.

Mr. BOUCHER. Thank you very much. Mr. Replogle?

Mr. REPLOGLE. I will second the comments that Ms. Liebe has just made, both preferring the House version, and commending the staff for their work here.

Mr. BOUCHER. Thank you. Mr. Holmes?

Mr. HOLMES. We would prefer the House version. We believe the provision for the 12-month grace period is particularly useful in cases where there is poor synchronization between parallel programs.

Mr. BOUCHER. Well, thank you for those answers. I had assumed that each of you would prefer the House version to the Senate version. And I would also assume that you would encourage us to go forward at this point, because if we do nothing, then the bill goes into conference with the Senate version, which you do not prefer. I think you would probably prefer to have the House version there, to put alongside the Senate version when the conference takes place. Would all of you agree with that?

Mr. Clifford.

Mr. CLIFFORD. Yes.

Ms. LIEBE. Yes.

Mr. BOUCHER. Yes. Everyone agrees.

Mr. REPLOGLE. Yes.

Mr. BOUCHER. Okay. Well, you have been most agreeable witnesses. Thank you. That concludes my questions, Mr. Chairman. And again, I want to thank you for sharing your time with us today.

Mr. HALL. I thank you, and that will conclude our hearing, and we do thank you, and don't have any pangs of anxiety about the lack of members here, because as you see, this is taken down. It will be given to every member, not just of this subcommittee, but of the entire Energy and Commerce Committee, and the U.S. Congress. It is available to them. It is from these, this testimony, that we will prepare and carry out the passage of this Act, and we are going to pass it, I think, in the House.

I really thank all of you. Thank you for your patience, the time it took you to get here, the time to go home, the time to prepare, and for all the time you spent standing by here today. We really appreciate it. You helped us an awful lot.

With that, we are adjourned.

[Whereupon, at 5:50 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

RESPONSE FOR THE RECORD BY HON. CHARLES D. NOTTINGHAM, ASSOCIATE ADMINISTRATOR FOR POLICY, DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION

QUESTION FROM HON. CHARLES A. GONZALEZ

Question: Could you please clarify your understanding of the timeline governing the opening of the U.S. border to NAFTA-related truck traffic from Mexico?

Anawer: I consulted with the Federal Motor Carrier Safety Administration (FMCSA), which has provided the following response:

A precise timeline cannot be specified at this time. In DOT's Fiscal Year 2002 appropriations act, Congress specified more than twenty conditions that needed to be met before the Department could expend any funds for processing Mexican motor carrier applications for operating authority beyond the border commercial zones. Pub. L. 107-87, section 350. DOT satisfied the conditions of the appropriations act in November 2002. Pursuant to our NAFTA obligations, the President shortly thereafter lifted the moratorium on long-haul Mexican truck and bus operations in the United States and indicated his commitment to making access of commercial vehicles from Mexico to the full U.S. market a reality.

In March 2002, FMCSA published interim final rules for motor carrier applications and safety monitoring regulations for Mexican motor carriers seeking authority to operate beyond the border commercial zones, reflecting changes that were made to comply with some of the conditions of section 350 of the FY2002 appropriations act.

Mexican officials have indicated that they view these stricter regulations as being inconsistent with our NAFTA obligations. Consequently, the Department has been engaged with our counterparts in Mexico to clarify the requirements, address any concerns that may exist and determine how best to move forward with the implementation process. These discussions are ongoing, and no firm date has been established for their conclusion at this time.

U.S. Environmental Protection Agency

The Honorable RALPH M. HALL
Chairman, Subcommittee on Energy and Air Quality
Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

DEAR CHAIRMAN HALL: Enclosed, for insertion into the hearing record, are the U.S. Environmental Protection Agency's (EPA) responses to follow-up questions from the March 2, 2005 hearing on the conformity provisions in H.R. 3. I hope this information will be useful to you and Members of the Committee.

Thank you for providing EPA the opportunity to testify on this important issue.

Sincerely,

JEFFREY R. HOLMSTEAD
Assistant Administrator

Enclosure

QUESTIONS FROM THE HONORABLE RALPH M. HALL

1. *Mr. Holmstead, according to your testimony, you state air quality monitoring data show that from 1970-2003, concentrations of all six criteria pollutants have declined, including the four criteria pollutants that are most affected by the transportation sector: carbon monoxide, nitrogen dioxide, ozone (smog), and particulate matter soot. Can you state how the legislative provisions before us today will aid in further declining these four pollutants that most affect the transportation sector?*

Response: While all of these pollutants are declining as a result of control programs, vehicle activity continues to increase. Conformity assures that transportation activities do not result in increases in activity that would outweigh the pollution control gains that we have achieved. The purpose of conformity is to ensure that an area's planned transportation activities are consistent with or "conform to" the motor vehicle emissions level established by the state air quality plan before such activities can be federally funded or approved.

EPA did not perform quantitative analyses on the Administration's proposed legislation or for the proposed legislative changes discussed above. Specific local area information that would be required to perform such analyses does not exist. When considering the targeted improvements to the conformity program proposed by the Administration, however, EPA considered a wealth of qualitative information. Legislative changes that do not modify the underlying purpose of conformity ensure that, on a regular basis, transportation planners demonstrate that emissions from the area's transportation network are, and will remain, consistent with emissions levels established in the area's air quality plan.

QUESTIONS FROM THE HONORABLE ELIOT ENGEL

1. *Mr. Holmstead: I am very concerned about the increased incidence of asthma and other respiratory diseases related to air pollution. I was interested to learn from the testimony of one witness that a recent study in the Bronx, which I represent,*

shows asthma rates of one in three children, where the national rate is one in five children. According to this study, not only is the asthma hospitalization rate 12 times above the national average, but the very high levels of pollution (measured as carbon) from diesel vehicles, appear to be associated with the very high asthma rates. Isn't Clean Air Conformity part of the solution to this problem? What assurances can you provide that the changes suggested by the Administration for changing this program will not have negative air quality impacts? Do you have analysis to support your conclusions?

Response: EPA is also concerned about the high rates of asthma that exist in many urban areas across the country and the role that diesel emissions play. That is one reason EPA has championed both regulations and voluntary programs to reduce diesel emissions. We have set stringent emissions standards for both on-road and off-road diesel vehicles and equipment. Additionally, we are aggressively pursuing voluntary diesel retrofit programs and anti-idling programs and providing demonstration grants around the country, including in New York City.

Transportation conformity has played and will continue to play an important role in ensuring that areas with poor air quality come into attainment of the national ambient air quality standards and maintain compliance with those standards in the future. The purpose of transportation conformity is to ensure that transportation plans, programs and projects do not create new air quality problems, delay attainment of the air quality standards or make an existing air quality worse. Transportation conformity will continue to accomplish its purpose with the changes that have been proposed by the Administration.

EPA did not perform quantitative analyses for the Administration's proposed legislative changes, nor is there specific local area information that would be required to perform such analyses. When considering these targeted improvements to the conformity program, however, EPA considered a wealth of qualitative information. The legislative changes proposed by the Administration do not modify the underlying purpose of conformity which is to ensure that, on a regular basis, transportation planners demonstrate that emissions from the area's transportation network are, and will remain, consistent with emissions levels established in the area's air quality plan. By maintaining the underlying purpose of conformity, we are certain that areas can move forward with conforming transportation plans, programs and projects without causing new air quality problems, making existing problems worse or delaying attainment of air quality standards.

2. *I would also like to note that another study cited by a witness suggests that diesel exhaust may lead to developmental aberrations in children born to pregnant women in upper Manhattan and the South Bronx. For obvious reasons, these studies are very disturbing to me and my constituents. Are we sure that we can change the conformity requirement to require less frequent planning looking at shorter time periods and still have no impact on air quality? What is the basis for such conclusions? Isn't it equally possible that we should leave the Clean Air Act as it is and try harder to clean the air, taking great care with the effects that road building has on air quality?*

Response: EPA is working on many programs that will help address these types of health effects on children born in urban areas. We are pursuing a number of options, both regulatory and voluntary in nature, to reduce diesel emissions. In addition to regulations addressing both on-road and non-road diesel emissions, EPA has initiated several cooperative efforts including the diesel retrofit program, the Clean School Bus USA program and the Smartway Transportation Partnership.

While we agree that we need to take great care with the effects that road building has on air quality, we believe that we can make these changes to the Clean Air Act's conformity requirements without a negative effect on air quality. Areas are still required to demonstrate that their transportation plans and programs are consistent with their air quality plans. Under the Administration's proposal, areas cannot add new regionally significant projects to transportation plans and programs until such a demonstration is completed.

Changing the minimum frequency for conformity determinations responds to concerns raised by transportation stakeholders who indicated that they could prepare better more comprehensive transportation plans if they were given more time between required plan updates and associated conformity determinations. As noted in a April 2003 GAO report on transportation and air quality planning requirements, a number of transportation planners indicated that having more time between required transportation plan updates and conformity determinations would allow them to: address transportation concerns such as relieving congestion and ensuring safety; think strategically about future alternatives for the transportation network; develop modeling and technical skills; obtain better planning information; and bet-

ter coordinate plans and projects with other agencies and stakeholders, such as local land use agencies.

Changing the time period covered by conformity responds to concerns raised by some transportation stakeholders that have indicated the disconnect between the time periods covered by air quality plans, usually 10 years or less, and conformity determinations, always at least 20 years, has caused unnecessary difficulty in demonstrating conformity in the past. We believe that the Administration's proposed change to the period covered by conformity both addresses the concerns raised by the transportation stakeholders while still requiring that they examine emissions far enough into the future to gauge the impact of their current transportation decisions. Additionally, the Administration's proposal to require that each conformity determination be accompanied by an emissions analysis for the last year of the transportation plan provides an early warning to the area in the event that emissions may increase in the future. Such an early warning would give areas the opportunity to address potential problems now rather further in the future.

For all of these reasons, we believe these changes can be made to the Clean Air Act without sacrificing air quality gains.

QUESTIONS FROM THE HONORABLE CHARLES A. GONZALEZ

1. *One of the challenges that local transportation planners have faced in regards to conformity is the "mismatch" between State Implementation Plans (SIPs) and Long Range Transportation Plans (LRTP). LRTPs are 20-year planning documents, while the SIP's timeframe depends upon the area's nonattainment status.*

H.R. 3 contains provisions to address this mismatch. As Mr. Clifford will explain in greater detail later this afternoon, H.R. 3 would do a better job at harmonizing these two planning horizons than current law.

Building upon the improvements in H.R. 3, what steps will the EPA take to work with the U.S. Department of Transportation to further synchronize the planning horizons required for EPA's air quality planning (namely, the State Implementation Plans) and the Metropolitan Transportation Plans?

Response: Over the next few years, EPA will be working with DOT in the development of new State air quality implementation plans (or SIPs) for the 8-hour ozone and PM2.5 national ambient air quality standards. Federal coordination is especially important when State and local governments choose to address horizons that are longer than what the Clean Air Act requires to protect public health in order to facilitate conformity determinations.

Additionally, EPA believes that flexibility is already provided by the Clean Air Act to allow States to decide for themselves whether a SIP revision to incorporate a longer horizon is necessary. States are in a better position to decide whether their SIP should establish a longer horizon than what is required by the Clean Air Act. Therefore, EPA would not want to require regular SIP updates or longer SIP horizons in areas where air quality improvements are occurring as anticipated by the SIP and conformity determinations are being made without difficulty. Many existing nonattainment and maintenance areas have been able to meet transportation conformity requirements without extending the horizons in their SIPs. Other areas have chosen to establish longer horizons in their SIPs to facilitate conformity determinations. Some of these areas include Las Vegas NV, Portland OR, Salt Lake City UT, Washington DC, and Albuquerque NM. We will continue to provide assistance to State and local officials that need to develop longer SIP horizons for conformity purposes.

In addition, EPA and DOT have established a national Memorandum of Understanding (MOU) that provides a mechanism for regular consultation between the federal agencies on SIPs that are developed across the country. The MOU is intended to ensure the proper implementation of the transportation conformity rule's provisions through better and more efficient EPA and DOT consultation in order to facilitate timely conformity and SIP decisions.

2. *Could you please clarify your understanding of the timeline governing the opening of the U.S. border to NAFTA-related truck traffic from Mexico?*

Response: The Department of Transportation (DOT) has authority to address this issue. They have provided the following information in response:

> A precise timeline cannot be specified at this time. In DOT's FY2002 appropriations legislation, Congress inserted provisions that attached more than twenty conditions to the expenditure of funds on the processing of Mexican motor carrier applications for operating authority beyond the border commercial zones. DOT satisfied the conditions of the appropriations act in November 2002. Pursuant to our NAFTA obligations, the President shortly thereafter lifted the moratorium on long-haul Mexican truck and bus operations in the United

States and indicated his commitment to making access of commercial vehicles from Mexico to the full U.S. market a reality.

In March 2002, Federal Motor Carrier Safety Administration published interim final rules for its application and safety monitoring regulations for Mexican motor carriers seeking authority to operate beyond the border commercial zones, reflecting changes that were made to comply with some of the conditions of the appropriations bill.

Mexican officials have indicated that they view these stricter regulations as being Inconsistent with our NAFTA obligations. Consequently, the Department has been engaged with our counterparts in Mexico to clarify the requirements, assuage any concerns that may exist and determine how best to move forward with the implementation process. These discussions are on-going and no firm date has been established for their conclusion at this time.

3. *During the hearing, Mr. Holmstead discussed the concept that conversations with the Mexican government are underway to work with PEMEX to provide lower sulfur diesel fuel in the Mexican interior. He anticipated that such distribution would begin on roughly the same timeline as federal mandates in the United States for Ultra Low Sulfur Diesel (ULSD). What are the likely fuel specifications for the Mexican low sulfur diesel?*

Response: We understand that ULSD fuel being contemplated in Mexico will be comparable in terms of component specifications to the fuel being introduced in the United States, with appropriate changes to reflect the Mexican market. In terms of emissions benefits, the sulfur content is the critical specification given its impact on advanced exhaust aftertreatment technologies as well as direct particulate matter reductions associated with lower sulfur levels.

4. *It is not clear that simply providing low sulfur diesel fuel in the Mexican interior will reduce NOx emissions in existing engines. The United States' ULSD does not provide important NOx reduction benefits when used in current heavy-duty diesel engines. Rather, ULSD does provide important NOx reductions when used in heavy-duty diesel engines which are fitted with NOx reduction hardware requiring low sulfur diesel.*

On the other hand, Valero produces a diesel fuel product, TxLED, which qualifies as a ULSD and provides extra NOx reduction benefits when burned in existing heavy-duty diesel vehicle engines. If the Mexican low sulfur diesel fuel blend envisioned by PEMEX were blended to ULSD specifications, it may not perhaps produce meaningful NOx reductions in any trucks save those, for example, meeting US specifications consistent with US federal standards for heavy-duty highway engines and vehicles, to take effect by 2007 (2007 Heavy-Duty Highway Final Rule). Note that, in this case, such low sulfur diesel fuel sold in Mexico would allow penetration by US trucks fitted with advanced NOx reduction technologies; such vehicles could refuel in the Mexican interior without fowling their low NOx hardware. This would help open Mexico to travel by these advanced heavy-duty diesel trucks. If the Mexican low sulfur diesel fuel envisioned by PEMEX were blended to specifications like those of TxLED to provide NOx reduction benefits when used in all existing engines, such fuel would both open the Mexican interior to advanced cleaner trucks without fowling their low NOx hardware and provide immediate NOx reduction benefits when used as a fuel in all existing trucks.

If PEMEX does produce a low sulfur diesel, what is the extent of the distribution region in Mexico and the likely timeline for implementation?

Is there now a forum for discussion of such border affairs that could include our local governments and other entities involved in clean air planning?

Response: The sulfur content of diesel fuel has a primary impact on engine-out emissions in its relationship to forming particulate matter, with reductions in sulfur leading to lower particulate matter levels. As you noted, the primary NOx benefits associated with ULSD are tied to the effectiveness of NOx aftertreatment technologies, which is maximized when sulfur poisoning due to fuel sulfur content is kept at 15 ppm or lower levels. We do note that the conventional refinery processes that reduce the sulfur content of diesel tend also to increase its cetane number slightly. Increased cetane number has been correlated with lower NOx emissions. Thus, ULSD could indirectly produce some small NOx reductions in existing engines.

TxLED (Texas Low Emissions Diesel fuel) is modeled on the California diesel fuel program, and in general would have higher cetane, lower density, and lower aromatics than conventional diesel found elsewhere in the U.S. If it also has sulfur at or below 15ppm, it may also qualify as ULSD. This fuel is estimated to produce NOx benefits of approximately 5% for pre-2007 model year engines, as a result of its cetane, density, and aromatics levels. As new engine standards phase-in, these benefits are expected to decrease.

It is our understanding that Mexico is seriously contemplating introduction of ULSD fuel nationwide, on a schedule at least a year later than it is introduced in the United States. A final determination on the fuel implementation schedule in Mexico has not been made.

The U.S.-Mexico Border 2012 Environmental Program created the Air Policy Forum to focus and concentrate on broad policy issues which require an ongoing dialogue between both countries. The Air Policy Forum is chaired by a Deputy Assistant Administrator from EPA's Office of Air and Radiation as well as the Director General of Air Quality Management and the Pollutant Registry from Mexico's environment ministry (SEMARNAT). Policy Forums, under the Border 2012 program, may elect to address policy issues through Task Forces and/or project-level efforts. Currently there are several local Task Forces in the border region meeting on a regular basis. These binational meetings afford the opportunity for local, state, tribal and federal representatives to participate in meaningful dialogue on air quality planning and management issues. Additionally, the Air Policy Forum has recently convened two stakeholder-based meetings to discuss a broad set of air quality issues in the border region. These forums have been an effective venue to address and discuss a host of air quality related issues, including the distribution and use of lower sulfur diesel fuel. For more information about the Air Policy Forum, including Task Force meetings, please go to www.epa.gov/border2012.

QUESTIONS FROM THE MARCH 2, 2005 HEARING

Congressman Gonzalez asked Mr. Holmstead for a date when the Nogales border-crossing truck study would be completed.

Response: On March 10, 2005, EPA announced that they would provide $200,000 to test air pollution emissions from trucks along the U.S. - Mexico border near Nogales, Ariz. The air quality testing will begin around March 14 and take approximately three weeks. Once the data has been collected it will take approximately five months to assess the data and prepare a report. A final report is expected in August 2005. We will be happy to provide a copy of the final report when it is available.

Congresswoman Solis asked Mr. Holmstead what has EPA done to reach out to under-served communities with regard to air quality issues and transportation conformity?

Response: EPA is committed to ensuring that the transportation conformity program continues to be implemented effectively in all areas of the U.S., including those areas with under-served populations. We believe the Administration's proposal for the reauthorization of TEA-21 includes changes to the conformity program that will yield better transportation and air quality results in all areas with air quality issues by allowing more reasonable period for planning and decision-making. Furthermore, we have and will continue to be committed to providing timely training opportunities and technical assistance to both nonattainment and maintenance areas.

For example, EPA, along with the Department of Transportation, have provided timely guidance and training to new ozone and fine particulate matter nonattainment areas before and as they implement the conformity program to support effective implementation. After the July 1, 2004, conformity rule addressing the new air quality standards was published, EPA conformity staff held a "road show" to explain the requirements of the rulemaking. Each EPA Region invited all the transportation and air quality agencies in their jurisdiction to attend these presentations. The training sessions were well attended by state and local air quality and transportation representatives, mostly from non-attainment areas. EPA also conducted a tele-video conference as a means to allow those unable to attend the other sessions (due to lack of resources or scheduling conflicts) another opportunity to learn about the new conformity requirements. In the near future, EPA will offer additional training on the conformity requirements for fine particulate matter.

Additionally, EPA's Office of Transportation and Air Quality is conducting a project in Baltimore with the Baltimore Urban League, Baltimore Metropolitan Council, the National Transportation Center at Morgan State University, and other stakeholders to help identify and develop practices and tools to undertake a comprehensive analysis of environmental justice and transportation-related issues in the Baltimore region. The goal of this project is to integrate environmental justice into transportation planning as an on-going and daily activity with meaningful community involvement throughout the process.

All Americans deserve to be protected from pollution. However, EPA's Office of Air and Radiation (OAR) recognizes that, in some instances, minority and low income communities face a higher level of environmental risk than the majority population. Therefore, OAR is committed to addressing this issue by incorporating envi-

ronmental justice into its activities and decision-making. The Office's goal is to achieve environmental justice by decreasing the burden on environmental risks to all communities as a result of improved air quality.

OAR currently has an Environmental Justice Action plan that is designed to support efforts to develop and implement strategies and activities to integrate environmental justice into existing programs, to further highlight the valuable work we continue to do in the area of environmental justice, and to develop a more coordinated environmental justice implementation strategy. As part of this plan, OAR has provided funding for a number of specific air quality projects which have environmental justice-related issues. These programs are part of EPA's National Clean Diesel Campaign. Examples of such projects include:

• Diesel Retrofit Program. This Program is a non-regulatory, incentive based, voluntary program designed to pursue reductions in hydrocarbons, nitrogen oxides, carbon monoxide, and particulate matter from existing diesel vehicles and equipment by the installation of pollution-reducing technology and other actions, such as reduced idling.

These programs promote the use of advanced emission control equipment reducing pollution from existing fleets. As part of these efforts, OAR is working to establish tribal community retrofit projects. One announced project involves a fleet of diesel vehicles from the Winnebago Tribes in Nebraska which will be retrofitted with pollution-reducing technology. An objective of this project is to address the disproportionate exposure risk for tribal children who live in this community.

OAR is entering into retrofit funding cooperative agreements with a number of organizations. Competitive proposals for funding which address environmental justice issues in the areas served by the projects were required. The evaluation criteria included environmental justice factors.

• Clean School Bus USA. In April 2003, EPA launched "Clean School Bus USA," a new children's health initiative aimed at reducing air pollution from school buses. This program is an outgrowth of EPA's Voluntary Diesel Retrofit Program. Across the country, 24 million children ride school buses spending a total of between 20 minutes and several hours per day on these vehicles. Unfortunately, older school buses can pollute up to six times more than buses using clean technology. Children are especially vulnerable to the effects of diesel emissions which can cause respiratory disease and exacerbate long term conditions such as asthma. Reducing pollution from school buses will help improve local air quality and reduce children's exposure to diesel exhaust. Children in environmental justice areas who suffer from asthma caused by diesel exhaust will benefit by the removal of one more asthma trigger.

• Smartway Transport Partnership. Under this voluntary program, another initiative is the National Transportation Idle Free Corridors Project which focuses on reducing emissions from long duration truck and locomotive engine idling at locations within urban areas (locomotive switch yards) and along major highway interstates (truck stops). Many of these locations are in environmental justice areas and will benefit from the achieved emissions reductions.

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environmental defense
finding the ways that work

Transportation Conformity: Accounting for Public Health in Transportation Decisions

Testimony of Michael Replogle, Transportation Director, Environmental Defense, 1875 Connecticut Ave. NW, Washington, DC
Before the House Energy & Commerce Committee

March 4, 2005

Mr. Chairman, my name is Michael Replogle, and I serve as Transportation Director of Environmental Defense. Environmental Defense is a leading, national, NY-based nonprofit organization, representing over 400,000 members, that links science, economics, and law to create innovative, economically viable solutions to today's environmental problems. Thank you for this opportunity to discuss suggested changes to the transportation conformity program in the Clean Air Act as proposed by H.R. 3, The Transportation Equity Act.

Progress On Clean Air Still Falls Short of Properly Protecting Public Health

We have made substantial progress as a nation in reducing air pollution over the last three decades, but half of all Americans still live in places with unhealthy levels of smog. Air pollution has a tremendous impact on public health, contributing to asthma attacks, lung cancer, heart disease, and tens of thousands of premature deaths each year. While today's vehicles are as much as 90 percent cleaner than those of the 1960s, cars and trucks emit a large portion of smog-causing pollutants: One-third of nitrogen oxides and a quarter of volatile organic compounds. Car and truck emissions also account for nearly one-third of the United States' climate-change-inducing carbon emissions. And motor vehicles will remain the leading source of air pollution for years to come in many metro areas because Americans are driving more and more. Peer

reviewed scientific research provides compelling evidence that air pollution from highways cause "adverse effects" to public health. According to the Federal Highway Administration's Report to Congress, in 1999, the adverse health effects of motor vehicle pollution cost Americans more than $40 billion each year. Conformity is an important tool for controlling emissions of the pollutants that contribute to these effects.

Why Conformity? Section 176 of the Clean Air Act requires that regional transportation plans contribute to timely attainment of health-based air quality health standards and conform to state-established air pollution limits. This transportation conformity provision of the Act was strengthened in 1990 to keep unanticipated growth in traffic and pollution from motor vehicles from causing regional air pollution control strategies to fail, as happened repeatedly in the past. Conformity has spurred broader political support for cleaner vehicles, fuels, and maintenance, and strategies to curb traffic and pollution growth with better travel choices. Conformity finally got transportation and air quality agencies to talk to one other and coordinate to cut pollution.

Proposed Changes to Conformity Would Weaken Protections for Public Health

Proposed changes to conformity threaten to undo this progress and to substantially weaken a key tool designed to help state and local air pollution officials manage vehicle emissions on a long-term basis. The result will be that air quality will deteriorate and there will be fewer options for eliminating air pollution. In the end, not only will the health of our citizens suffer, but other sources, at perhaps greater cost, may be forced to implement emissions reductions that proper transportation planning could have avoided.

We urge you not to upset the existing clean air and public health protections built into our transportation programs. Both the House and Senate bills include provisions that weaken these protections, in some cases dramatically. In most cases, the House provisions, which are the same as in this year's H.R. 3, are less damaging to clean air protections. The most preferable and protective action Congress can take is to reaffirm the existing law with no changes. But adoption of the H.R. 3 provisions would be preferable to the House taking no position on this vital matter as the transportation bill goes to conference. We also urge you to reject any efforts to add new provisions to weaken clean air protections during conference negotiations.

Planning Horizon. A Senate proposal to reduce the conformity analysis planning horizon for long range transportation plans from 20 to 10 years would allow officials to ignore until it is too late the long term growth of air pollution set in motion by developing major new highways, which often take more than 10 years to be fully manifest. Yet the U.S. Department of Transportation found that in 15 years only six metropolitan areas have faced problems meeting the twenty-year conformity horizon since 1990, and in all six cases conformity was achieved by adding long-term pollution controls or changes to transportation plans. The basis for changing the planning horizon can only be to disregard the adverse long-range emissions consequences of additional highway projects in order to transfer the costs of correcting those consequences to other source categories. H.R. 3 would continue the 20-year requirement except in areas where the metropolitan planning organization and air pollution control agency agree to reduce the horizon, which allows local needs to be taken into account and other safeguards to be adopted. This will be less damaging to clean air than the Senate proposal.

Ensuring Conformity of Plans, Not Just Projects. A Senate proposal would narrow the scope of conformity so it would apply only to regionally significant projects, rather than to the entire Transportation Improvement Program and Constrained Long Range Transportation Plan, exempting smaller projects that might otherwise trigger analysis to consider localized pollution hot-spots or that might cumulatively produce regionally significant emissions impacts that harm health. This provision would continue to allow large investments in polluting projects during a conformity lapse, which would exacerbate the violation of the SIP emissions budgets, and increase the difficulty of bringing emissions back into line with the emissions budgets needed to attain. H.R. 3 has no counterpart provision.

Ensuring Air Agency Involvement in SIP Revisions. A Senate proposal would allow transportation agencies to modify Transportation Control Measures in State Implementation Plans for air quality (SIPs) without any oversight or approval from local, state or federal environmental agencies. This would weaken the integrity of SIPs and could lead to their failure. H.R. 3 corrects some of the deficiencies in the Senate bill by at least ensuring that changes to the SIP are approved by the State.

Frequency of Conformity and Timing of Impact of Lapse. Current law requires updating of conformity for areas with unhealthful air quality every 3 years for long-range transportation plans, matching the 3-year milestone compliance demonstration requirements by which EPA can ensure timely updates to air quality plans, and it requires conforming short-term transportation funding programs to be updated every 2 years. Last year's Senate bill and H.R. 3 both propose required conformity updates every 4 years, while H.R. 3 would add to this a one-year grace period before any conformity lapse takes effect, a provision not in the Senate bill. We remain

concerned these changes will undermine timely awareness and action to correct conflicts between transportation and air quality plans, contributing to more missed clean air deadlines.

Like reducing the frequency of medical checkups for a person with a serious medical condition, or reducing the frequency of checkbook balancing for someone with a history of being overdrawn, reducing the frequency of conformity reduces the likelihood that problems will be detected and addressed in a timely way, when they are still manageable. Indeed, by a 3:1 margin, state air officials surveyed recently by the US General Accounting Office believed that reducing the frequency of conformity analysis to once every 5 years would make it more likely their area would fail to achieve healthful air quality by the deadlines established by the Clean Air Act.

Frequent checks ensure timely coordination between transportation and air quality plans when changes in conditions and assumptions show that pollution had been underestimated. It is easier and less expensive to correct problems early before they have compounded. According to the Environmental Protection Agency, only 10 percent of about 600 conformity demonstrations since 1997 have resulted in a conformity lapse and the vast majority of these delays lasted six months or less and involved areas where few or no significant road projects faced delays. The combination of a reduced planning horizon, coupled with less frequent planning, means that emissions are more likely to exceed emissions budgets, and transportation plans will bear a much more difficult burden in reducing emissions to meet emissions budgets. Ultimately a conformity lapse will be more likely, and agencies will be less able to remedy the lapse.

Real-World Conformity Success Stories Put At Risk by Proposed Changes

It is useful to consider real world stories about how transportation conformity has worked to understand why the changes proposed by road industry groups and state DOTs are inadvisable.

Denver and Charlotte Extend Their Clean Air Horizon. In 6 metro regions in the past decade where 20-year transportation plan emissions were found to exceed the air pollution plan limits this problem was readily fixed by committing to future emissions controls or by redesigning the transportation plan to reduce emissions. In Charlotte in the mid-1990s, conformity showed excess emissions in the 20-year transportation plan. This led officials to adopt a revised plan with better transit and smarter growth, trimming forecast traffic growth and pollution by almost a quarter, winning voter approval for the plan. That's a conformity success story that might not be told today if only short-term impacts are considered for conformity.

Denver was faced with terrible winter particulate pollution in the 1980s and agencies began taking action against wood burning, but particulate pollution remained well in excess of federal standards. Conformity in the 1990s prompted transportation and air quality officials to look at other sources of particulates, which led to replacing street sanding with chemical deicers and widespread road sweeping, causing particulate levels to drop by half. Conformity spurred Denver to build into regional plans enough maintenance plan measures to meet long-term health standards through 2015 and provided an incentive for developing light rail as a long-term pollution control measure, as well as a commitment by metro area governments to limit growth to a 730-square mile area, with transportation alternatives to support this goal. Travel demand management strategies in the Denver long range plan promote ridesharing and telework and are used as a safety margin in meeting the 2025 emissions budget. By 2001, Denver was one of only

a few large metro areas that had attained every national air quality standard. Reducing the time horizon and frequency for conformity, as proposed, would mean weaker incentives for such positive steps.

Reducing the time horizon and frequency for conformity, as proposed in the Senate bill, would mean that violations of emissions budgets would not be discovered until the second 10-year period becomes the current 10-year period. At that point, the plan would show violations that would force the area into a conformity lapse which would be hard to remedy. In many cases, the conformity lapse could only be cured by immediate emissions reductions because there would be no lead time to develop and implement long-term changes to the transportation system. Such immediate controls are likely to be much more expensive and more disruptive. At least H.R.3 would continue to require emissions analyses for the full 20-year time horizon, which gives planners an opportunity to avoid a conformity crisis.

Washington D.C. Learns that Conformity Balance Can Help Keep the Doctor Away. In metro Washington, DC, in 2001, a year into a two-year transportation program, regional officials updated planning assumptions to acknowledge the growing use of more highly polluting Sport Utility Vehicles (SUVs) by area drivers. They found this caused emissions to violate adopted air pollution plan limits by 8 tons per day. Over the next year, they found solutions within the transportation plan to this conformity problem with better accounting for emission strategies already underway, investing $42 million in clean buses and other measures, and trimming $800 million from road programs which cut forecast traffic growth, congestion, and pollution. If proposals for reduced conformity frequency had been law, the region would have ignored these problems for another two or three years without action. If proposals from the road lobby to

mandate the use of out-of-date planning assumptions for conformity had been law, the DC area public and elected officials would not have even learned that their air pollution plan was failing due to rising use of SUVs. If other proposals from the road lobby to provide an 18-month grace period following a conformity lapse before limiting new project approvals had been law, solutions to the problem would have been deferred, not addressed. Air quality in our nation's capital would be more harmful on more days of the year. Attainment of healthful air quality would be a more distant goal. Thanks to current law, even while the DC area remains a severe non-attainment area for ozone, it's residents can breathe a bit easier.

Conformity Lapse Helps Atlanta Get Back on Track Until FHWA Reinterprets Rules.

No region has ever lost funds due to conformity, even in the worst case of an area that was in a prolonged lapse of conformity, such as Atlanta. There, after a massive freeway construction program helped spur the region's residents to drive on average more miles per day than any other region in the world, officials failed to adopt readily available strategies for reducing air pollution even after it was apparent in 1996 that the transportation plan's projected emissions far exceeded the pollution limits adopted in the state implementation plan for air quality. Routine conformity analysis led to improved estimation of air pollution and spurred progress for clean air in Atlanta. In 1996, the area's air quality plan said the region would meet a motor vehicle emission budget of 214 tons per day (tpd) of NOx by 1999, the Clean Air Act deadline for attaining ozone health standards. In 1998, area officials wrote to EPA saying that 1999 NOx emissions would actually be 238 tpd, reflecting the use of a refined travel model and updated growth forecasts. In 1999, the same officials found that real-time NOx emissions were 264 tpd, exceeding by 50 tons the limit established as necessary to attain the national health standard. In 2001, they admitted that the region would not reach the 214 tpd motor vehicle NOx budget until 2005. This led to

significant shifts in transportation funding to help curb traffic and pollution growth - shifts that area officials would have avoided had they not been required to update a conforming transportation funding program every 2 years, with public oversight.

A transportation conformity lapse between 1999 and 2001 spurred Atlanta area officials to redirect over $300 million from road projects that would have further increased pollution, traffic, and sprawl into highway safety, transit, sidewalks, bikepaths, HOV lanes, maintenance, and bridge reconstruction projects that would reduce air pollution or at least not boost pollution. Transportation conformity limits on new road project approvals spurred adoption of governance reforms, leading to establishment of a new Georgia Regional Transportation Authority to better coordinate transportation, land use, and air quality policies in the state. Atlanta demonstrated how improving transportation choices can cut traffic, pollution, and health harms to children. By adding 1000 buses and encouraging alternative modes, area officials cut morning traffic by 23 percent during the 1996 Olympics, reducing ozone levels and resulting in nearly 20 percent fewer hospitalizations of children for asthma.

But in 2001, FHWA allowed Atlanta to begin approving new roads again, even though its emissions remained well above the 1999 adopted air pollution State Implementation Plan (SIP) limits, construing EPA's conformity rule as requiring only one emissions analysis for the end of each ten-year period once the attainment date for an area is passed. In other words, FHWA is saying transportation emissions are not required to comply with the SIP <u>after</u> the attainment date and that conformity is met by showing only that emissions are likely to comply ten years in the future. So if an area chooses the strategy adopted in Atlanta, it can skip the obligation to comply in the attainment year by going into a conformity lapse for a year, and then re-establish its

conformity status by showing that it will comply ten years later without ever reducing emissions to the level required for attainment. As proposed, the 10-year conformity horizon together with FHWA's application of the conformity rule would no longer require emissions to actually meet the level established by the State as necessary for attainment. There will be no year when motor vehicle emissions must actually comply with the limit on vehicle emissions in the SIP, likely causing the air pollution control plan to fail.

A recent paper produced by the Center for Clean Air Policy, *Atlanta's Experience with Smart Growth and Air Quality*, provides further detail on this important case study in how conformity has operated in the larger context of transportation and air quality planning. It is included in this testimony for the record as Attachment 1.

New Research Shows Serious Health Effects of Transportation on Public Health

In the face of recent peer-reviewed scientific research that provides some of the most compelling evidence ever that showing that transportation can have serious adverse health impacts on children and others in our communities, Congress should resist pressure from industry groups to weaken clean air and public health protections. Conformity is an important tool for controlling emissions of the pollutants that contribute to these health effects. We summarize below some of the recent studies that support the need for better enforcement of existing clean air laws.

Cancer Risk. In 2000, the South Coast Air Quality Management District in California made a major contribution to the research showing the link between cancer and mobile source pollution. The final Multiple Air Toxics Exposure Study (MATES-II) measured exposures to 30 toxic air

pollutants at 22 locations in the Los Angeles air basin.[1] Using estimates of cancer risk developed for toxic air pollutants by the U.S. Environmental Protection Agency (EPA) and the California Air Resources Board, MATES-II found that cancer risk from the 30 air pollutants averages 1.4 cancers per 1,000 residents. Apportioning air pollution-related cancer risk by pollutant, MATES-II demonstrated that emissions from mobile sources account for 90% of the overall cancer risk attributable to toxic air pollutants in the five-county air district. Id., p. ES-3 ¶1, Fig. ES-2. The total cancer risk from all sources, including traffic ("on-road mobile"), non-road mobile and stationary sources, averaged across the region was found to be 1400 per million. Id., p. ES-3. On-road vehicle emissions account for half of this risk, or 700 per million. Id., Fig. 4-2. This equates to about 1 cancer for each 1450 exposed people.

MATES-II also demonstrated that higher levels of risk occur near highways. The study found that the range of cancer risks varied significantly across the region, from 1,120 in a million in the cleanest neighborhoods to about 1,740 in a million in the most polluted. Id., p. ES-3 ¶2. The Report found the greatest risk levels at locations where "the dominance of mobile sources is even greater than at other sites." Id., p. ES-5 ¶3. It also found that "model results, which are more complete in describing risk levels…than is possible with the monitored data, show that the higher risk levels occur… near freeways." Id., ¶B.2. "Results show that the higher pollutant concentrations generally occur near their emission sources." Id., ¶4. These findings provide further evidence that neighborhoods near highways would experience higher concentrations than the regional averages. Based on all these observations, MATES-II concluded that "[f]or mobile source compounds such as benzene, 1-3 butadiene, and particulates associated with diesel fuels, higher concentration levels are seen along freeways and freeway junctions." Id., p. 5-4 ¶5.3.

[1] South Coast Air Quality Management District, Multiple Air Toxics Exposure Study-II (Mar. 2000),

Thus the cancer risks to populations in close proximity to a major freeway will be substantially greater than the regional cancer risks attributable to motor vehicle emissions.

Risks to Sensitive Populations. Particularly important for assessing the adverse health impacts of emissions from highways located near school buildings and residential areas are recent research reports that have focused on the links between motor vehicle emissions and adverse health effects suffered by children.

A new study designed to determine whether the proximity of 10 middle schools to major freeways in California's East Bay caused adverse health effects among school children aged 10 to 12 found a statistically significant greater prevalence of diagnosed asthma and bronchitis among students at the four schools most affected by motor vehicle emissions.[2] At each school, the study monitored concentrations of a number of motor vehicle-related pollutants, showing that $PM_{2.5}$ was 25% higher in a school yard 60 meters from a freeway than at monitors located a mile from the freeways.[3] Black carbon, a component of diesel exhaust measured at the schools, was also shown to increase with proximity of the school to a major highway. Carbons levels were 55% higher at the school closest to a freeway compared to schools that were more than a mile distant from a freeway. Air quality at every school complied with national ambient air quality standards (NAAQS).

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available at http://www.aqmd.gov/matesiidf/matestoc.htm.

[2] Janice J. Kim et al., *Traffic-Related Air Pollution Near Busy Roads: The East Bay Children's Respiratory Health Study*, 170 <BI>Am. J. Respiratory & Critical Care Med.<D> 520 (2004).

[3] *Id.*, tbl. 2 (average $PM_{2.5}$ measured at school closest to a freeway was 15 micrometers per cubic meter ($\mu g/m^3$) compared to 12 $\mu g/m^3$ at regional air district monitors).

A study in the Bronx, New York, investigated truck traffic, particulate matter and carbon concentrations in the neighborhood around the Hunts Point terminal where one in three children have asthma (compared to one-in-five nationally), and the hospitalization rate for asthma is 12 times the national average.[4] The reported carbon levels used as a surrogate for diesel emissions ranged at six sites from more than two to nearly seven times greater than the levels reported at the school site in the East Bay Children's Respiratory Health Study with the highest levels.[5] Carbon concentrations were found to correlate strongly with daily diesel truck traffic on the streets nearest the monitor.

The data from both the East Bay and the Hunts Point studies strongly suggest that carbon levels associated with diesel emissions may be directly responsible for inducing the allergic response that is asthma, or they are a surrogate measure of the mix of chemicals in diesel exhaust that initiate asthma. According to the President's Task Force on Environmental Health Risks and Safety Risks to Children, America is in the midst of an asthma epidemic.[6]

EPA has observed, once asthma is induced in a child, "asthma cannot be cured, only controlled."[7] Since the East Bay study suggests that the numbers of children diagnosed with asthma appear to increase during the few years children are in middle schools located near highways, the greater number of years that young children will be exposed during the elementary years at Swansea Elementary School threatens to impair the health of these children for the remainder of their lifetimes.

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[4] T. Suvendrini Lena et al., *Elemental Carbon and PM2.5 Levels in an Urban Community Heavily Impacted by Truck Traffic*, 110 <BI>Envtl. Health Persp.<D> 1009 (Oct. 2002).
[5] *Compare id.* tbl. 4 *with* Kim et al., *supra* note 9, tbl. 2.
[6] Asthma and the Environment: A Strategy to Protect Children, President's Task Force on Environmental Health Risks and Safety Risks to Children, January 28, 1999, Revised May, 2000.

Another study assessed the impact of pollution levels on lung development from the ages of 10 to 18. Measurements of lung function in large cohorts of school children who were followed for eight years in 12 California communities demonstrate large deficits in three measures of lung function among students living in the communities with the highest pollutant concentrations compared with comparably aged students in communities with the lowest pollutant concentrations.[8] By age 18, when most lung growth has been completed, these reductions in lung function were expected to remain throughout the lifetime and contribute to future health complications.[9] The motor vehicle-related pollutants elemental carbon and NO2 were two of the three pollutants most strongly correlated with this adverse health outcome. In the most polluted community in the study, the eight-year elemental carbon concentration was comparable to the carbon level reported in the school yard closest to a freeway in the East Bay Children's Respiratory Health study, and more than five times lower than the highest carbon levels measured in the Hunts Point neighborhoods adjacent to truck routes. These studies demonstrate that children in neighborhoods exposed to the pollutants emitted from freeways and major truck routes are at significantly greater risk of life-long health impairment from reduced lung function as well as asthma.

New research aimed at attempting to find an explanation for children who die of cancers before age 16 also found a strong correlation between the proximity of the residence of the mother to highways (less than one kilometer) during fetal development and the first months following

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[7] 66 Fed. Reg. 5001, 5013 (January 18, 2001).
[8] J.W. Gauderman et al., *The Effect of Air Pollution on Lung Development from 10 to 18 Years of Age*, 351 <BI>New Eng. J. Med.<D> 1057 (Sept. 9, 2004).
[9] *Id.* at 1063.

birth.[10] Another study identified increased chromosome aberrations in newborns who were exposed to PAHs found in diesel exhaust during pregnancy as a result of the mother living in neighborhoods in Upper Manhattan and the South Bronx.[11] These chromosome aberrations are often a precursor to the development of cancer. This provides a plausible mechanism to explain why children die of cancer before age 16. Exposure to diesel exhaust in the womb may be one of the most harmful effects of vehicle-related emissions. Together, these studies suggest that fetuses may be the population most vulnerable to the adverse health effects of motor vehicle-related pollutants.

These and other recent field research demonstrate that the emissions control programs adopted under the CAA for gasoline and diesel vehicles do not protect against adverse health effects attributable to motor vehicle emissions from large numbers of vehicles such as occur on heavily trafficked highways, interchanges, truck and bus terminals, airports, or seaports. The American Pediatric Association, the national association of physicians specializing in children's health, highlighted the threats to children in a new Policy Statement issued in 2004.[12] The APA Policy Statement made recommendations to protect children from the harmful effects of air pollution, including expanded efforts to control vehicle emissions and a policy that schools not be located near highways.

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[10] E.G. Knox, *Childhood Cancers and Atmospheric Carcinogens*, 59 <BI>J. Epidemiology Community Health<D> 101 (Jan. 2005).

[11] Bocskay, Kirsti A., et al., "Chromosomal Aberrations In Cord Blood Are Associated With Prenatal Exposure To Carcinogenic Polycyclic Aromatic Hydrocarbons," *Cancer Epidemiology Biomarkers and Prevention* (in press), available at http://cebp.aacrjournals.org.

[12] "Ambient Air Pollution: Health Hazards to Children," Committee on Environmental Health, Pediatrics 2004;114;1699-1707.

Clean Air and Smart Growth

Conformity has fallen short in achieving one of its original goals as framed in the 1990 Clean Air Act Amendments, to encourage efforts by local, regional, and state officials to design transportation plans that would contribute to more timely attainment of healthful air quality. But some regions have made progress towards this end and are finding ways to reduce pollution at no cost at all through better community designs that respond to citizen and market demands. Vision planning initiatives in Salt Lake City and Sacramento have recently built on the early success of Portland, Oregon, in helping citizens and elected officials define new regional plans that accommodate new job and housing growth with less traffic growth. A recent paper produced by the Center for Clean Air Policy, *Two for the Price of One: Clean Air and Smart Growth*, does a good job of summarizing best practices in this area and possible pathways for further progress, and is included in this testimony for the record as Attachment 2.

Conclusion

The story today is simple. Across much of America we have serious transportation related air quality problems that harm our health. The tools to fix that problem are in place, but some want to blunt these tools, leading to more dirty air and harm to the health of millions of Americans.

Congress should protect accountability for air quality in the federal transportation bill and double funding for clean air, metropolitan and state planning, and transit programs. Gutting clean air laws will undermine public support for transportation funding. Protecting those laws and providing more resources can help replicate these success stories across America and ensure that transportation contributes to improved public health and clean air.

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Two for the Price of One: Clean Air and Smart Growth
December 1-2, 2004 Sacramento, CA
*** ATLANTA CASE STUDY ***

Attachment 1:

Atlanta's Experience with Smart Growth and Air Quality

Population Growth and Land Use in the Atlanta Region

The Atlanta Urbanized Area is the 11th largest in the United States with a population of over four million people. The region grew by 1.1 million residents through the 1990s and created an additional 631,000 jobs during the same period.[13] The 18 counties that comprise the Atlanta regional MPO include three of the ten fastest growing counties in the country.

Traditionally, the urbanized area has accommodated this growth in population through the proliferation of low density development patterns. Since 1990, the region's population has increased by roughly 13 percent, but the amount of developed land has grown by 50 percent. The region ranks third in land area and 272nd in population density. At 1,783 people per square mile Atlanta is the region with more than one million people to have a population density below 2,000 per square mile.[14] Population densities experienced in Atlanta today are half of those recorded in the 1970s.

Due in large part to sprawling development patterns and limited transportation choices, Atlantans drive more than 100 million miles per day – equivalent to a trip to the sun and part of the way back. Atlanta has also been ranked with the fifth worst traffic congestion in the country with annual average delays per traveler of 60 hours, costing the region about $1.7 billion annually.[15, 16]

Air Quality History

The 13-county Atlanta region has the worst ozone pollution of any major city in the Southeast. Since the Clean Air Act was overhauled in 1977, Atlanta has never been in compliance with ozone standards. For 69 days during the summer of 1999, ozone pollution violated air quality health standards. On bad air days there is a 35 percent increase in emergency room visits for respiratory-related illnesses (mainly children and the elderly). During the 1996 Olympics, when fewer people used cars and more people used transit, emergency room visits by children with asthma dropped by as much as 45 percent.

Conformity Lapse, 1998-2000

In 1998, the Atlanta Regional Commission (ARC) was unable to develop a Transportation Improvement Plan (TIP) that demonstrated conformity to the adopted and approved 1999 attainment year motor vehicle emission budget as required under the Clean Air Act. The conformity lapse lasted from 1998-2000 and restrictedAtlanta's state and local agencies from approving funding for new regionally significant transportation projects other than pollution reducing transportation control measures and conformity exempt projects.

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[13] Atlanta Regional Commission (2004), "Mobility 2030 Regional Transportation Plan, Volume I"
[14] Ibid.
[15] http://mobility.tamu.edu/ums/congestion_data/tables/national/table_1.pdf
[16] http://mobility.tamu.edu/ums/congestion_data/tables/atlanta.pdf

Federal, state, and local governments were barred from funding new regionally significant conformity non-exempt transportation projects due to the 1998 conformity lapse, but the local and state governments used a grandfathering loophole in the EPA conformity regulation to exempt from the conformity requirements roughly $1 billion in road projects, arguing that because they had been included in a previously conforming transportation plan and program, they should be allowed to advance to construction even though they might increase air pollution emissions. This interpretation of the law was challenged by Environmental Defense in a suit which overturned the regulatory exemption through a March 1999 DC Circuit Court ruling. In the wake of that action, four environmental groups (the Sierra Club, the Georgia Conservancy, Georgians for Transportation Alternatives and the Southern Environmental Law Center) won a June 1999 settlement a lawsuit against USDOT, Georgia DOT and the ARC agreeing to allow 17 Atlanta-area road projects to proceed while terminating further action to advance 44 others until they might be included in a new conforming transportation plan.[17]

Atlanta area transportation agencies were encouraged to reallocate their transportation funding during the conformity lapse to fund emission-reducing or emission-neutral projects. This resulted in redirection of over $300 million in federal, state, and local funds towards transit, transportation demand management, high occupancy vehicle, highway safety, traffic signal, pedestrian/bicycle, and bridge reconstruction projects that do not negatively impact air quality and are exempt from conformity. The conformity lapse served as a wake up call for the region's public and private institutions, spurring on initiatives to identify and address the interrelated issues of air quality, transportation, quality of life and land use.

Atlantic Station Infill Development Project

The Atlantic Station project, in downtown Atlanta, is an effort to transform the former Atlantic Steel site, a 138-acre brownfield, into a model of mixed-use development that would emphasize residential and business uses, and include an auto and transit bridge connecting the site to the Midtown neighborhood. The EPA analyzed the likely effects of locating a development of the same scale and mix of uses in various 'greenfield' settings. Estimated VMT reductions ranged between 14 and 52 percent when compared to similar-size suburban and urban greenfield lots with less transit and pedestrian accessibility.[18] The conformity lapse created a unique situation where the Atlantic Station development was shaped as a Transportation Control Measure.

Political and Institutional Responses

Formation of the Georgia Regional Transportation Authority (GRTA) [19]

The Georgia Regional Transportation Authority was brought to fruition in 1999, after being passed through the state legislature with bipartisan support. The Authority emerged from the recommendations of the Metropolitan Atlanta Transportation Initiative (MATI), a response by Metro Atlanta Chamber of Commerce to growing concerns about Atlanta's air quality and

[17] http://edition.cnn.com/NATURE/9906/21/clean.air.settlement/
[18] http://www.epa.gov/projecbd/atlantic/020199.htm
[19] Georgia Regional Transportation Authority (2004), http://www.grta.org/

the funding in the TIP would be fully expended by 2003. Environmental groups argued this would hence contribute to further violations of and delay in attainment of the national ambient air quality standards, violating the Clean Air Act's statutory requirements and congressional intent. The 1999 Attainment SIP emission budget remained in force despite EPA's extension of the Atlanta attainment deadline to 2004, which relied on an attainment date extension policy proposed by EPA in 1998. The conformity approval was made by Georgia authorities and the Federal Highway Administration with the understanding that once the 1999 attainment year had passed, EPA's conformity regulation required that the 2001-03 TIP and 2025 RTP conform to the emission budget only by the time of the next SIP milestone year, deemed to be 2004, with no requirement to consider mobile source emissions in the 2000-03 period.

A district court ruling upheld the July 2000 Atlanta conformity approval, ruling on the basis of its reading of EPA's conformity regulation and the considerable discretion given to federal agencies to interpret regulations. The court chose not to consider plaintiff arguments based on a reading of the Clean Air Act statute or expressions of congressional intent, saying such arguments should be brought in the DC Circuit Court. The 11th Circuit Court of Appeals upheld the district court ruling in a rare unpublished opinion that, because it is unpublished, can be neither appealed nor cited as precedent, even within the 11th Circuit.

EPA's attainment date extension policy was itself challenged by environmental groups and overturned in four federal courts, leading EPA to withdraw the policy in Atlanta and elsewhere in 2003. That caused EPA to bump-up to "Severe" Atlanta's non-attainment designation under the 1-hour ozone standard, triggering new emission SIP and emission reduction obligations. By this time the approved Atlanta 2001-03 TIP and 20205 RTP had already been used to expend hundreds of millions of dollars on new sprawl, traffic, and emission inducing highways, making moot the challenges raised by environmental plaintiffs in their 2001.

Atlanta Regional Commission (ARC) Efforts

Livable Centers Initiative (LCI)[23]

The Livable Centers Initiative is an effort by the ARC to promote residential development, mixed uses, greater connectivity and expanding transportation and options within the region's towns and activity centers. The program developed from initial provisions within the 2025 RTP proposal to fund planning studies and transportation projects in these centers, and has been extended to include corridors and emerging centers in the 2030 RTP.

Initial funding for the LCI program included $1 million annually over five years to fund planning studies, and $350 million for transportation projects resulting from LCI studies. The LCI program has become a nationally recognized model for supporting smart growth policies through the use of transportation funds. Provisions for the continuation of LCI studies and projects are included in both the 2030 RTP and the 2005-2010 TIP; however they are contingent upon receiving a conformity determination.

[23] Atlanta Regional Commission (2004), "Livable Centers Initiative" http://www.atlantaregional.com/qualitygrowth/programsummary.html

Assessment of 2025 RTP Implementation

Land Use Efforts

The 2025 RTP made aggressive land use assumptions to bring the region back into conformity in 2000, however the plan has been often criticized for its lack of progress in its implementation. The Livable Centers Initiative has been a successful program that requires further investment to increase the development of transportation and land use linkages in target areas. Despite providing strong incentives, funds dedicated to the LCI program account for less than one percent of transportation funding under the RTP. The expansion of the program to include corridor level transportation projects will require a greater funding commitment.[26]

Transit Funding

Transit systems in the Atlanta Region have been forced to cut services in recent months at a time when the system is needed to expand to address congestion and air quality concerns. The Metropolitan Atlanta Rapid Transit Authority (MARTA) is the largest transit agency in the state carrying over 500,000 people daily. Questions of funding for both service expansion and operating costs have affected the long term planning of the region's core transit system. The Governor's Fast Forward transportation program calls for $500 million in state bond financing for two bus rapid transit routes, that will carry about a quarter of current MARTA ridership, State funding to MARTA, however is only $2 million for the new $190 million fare collection system that assists suburban buses feed into the MARTA system. Suburban bus systems will also face funding problems when federal start-up grants run out. More funding support for transit is likely to be needed at both the local and state level if transportation and air quality goals are to be met.[27]

2030 Regional Transportation Plan

The ARC board will take action on the region's most recent Regional Transportation Plan, "Mobility 2030" on December 1st. The new RTP is designed to satisfy federal requirements for a transportation plan to conform with the region's air quality plan.[28] The plan has four goals: 1) improve accessibility and mobility options for all people and goods, 2) maintain and improve system performance and preservation, 3) protect and improve the environment and the quality of life, 4) increase the safety and security of the transportation system. The ARC Board indicated that priority should be given to projects that: support Regional Development Plan policies, establish and maintain a connected system that improves connectivity between and within Activity Centers, Livable Center Initiative areas, and transit station areas, and reduced traffic congestion in the most congested corridors based on the congestion management monitoring network with specific consideration given to duration of congestion. The draft plan has been criticized by environmental groups on the grounds that it provided insufficient linkages between transportation and land use and insufficient funding for transportation alternatives.[29] The current

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[26] Ibid.

[27] M. Saporta, "Mass Transit in Atlanta is Disgraceful," *Atlanta Journal Constitution, October 17, 1004.* http://www.ajc.com/business/content/business/saporta/1004/18saporta.html

[28] Atlanta Regional Commission (2004), "Mobility 2030 Regional Transportation Plan": http://www.atlreg.com/transportationair/v1all.pdf

[29] for example, see letter from Southern Environmental Law Center and Environmental Defense to Atlanta Regional Commission, Comments on Mobility 2030 Regional Transportation Plan, October 15, 2004.

annually by the dates mandated in the Act. In addition, States may have used inaccurate data, assumptions, and projections of emission growth, resulting in fewer reductions planned than appropriate. For example, the ozone emissions reduction plan for the Atlanta metropolitan area assumed a growth rate that was about half of the population growth rate that the Atlanta metropolitan area experienced from 1980 to 2000, and about one-third of Atlanta's growth rate for employment. The Act requires emission reductions of at least 3 percent annually over and above an area's growth. Limited EPA oversight of the development and implementation of emission control plans contributed to the difficulties States encountered in reducing emissions by the required 3 percent annually. Additionally, a 1997 EPA policy allowing nonattainment areas to claim emission reductions from selected sources outside of the nonattainment areas allows for potential double-counting and does not ensure that reductions do more than just offset growth.[31]

* * *

Selected Resources

Atlanta Regional Commission: http://www.atlantaregional.com/

ARC Livable Centers Initiative: http://www.atlantaregional.com/qualitygrowth/lci.html

Atlanta Regional Commission, *Implementing ARC/GRTA Joint Land Use Strategy*, June 2003. http://www.atlantaregional.com/qualitygrowth/JointLandUseStrategy.pdf

Brookings Institution, *Moving Beyond Sprawl: the Challenge for Metropolitan Atlanta*, 2000. http://www.brook.edu/dybdocroot/es/urban/atlanta/atlanta.pdf

Georgia DOT: http://www.dot.state.ga.us/dot/communications/publicawareness/airquality.shtml

GRTA: *http://www.grta.org/default.asp*

Metro Atlanta Chamber of Commerce, *Metro Atlanta Quality Growth Task Force Consolidated Final Recommendation*, May 2004. http://www.qualitygrowthatlanta.org/images/quality_recommendationsl.pdf

Metro Atlanta Chamber of Commerce *Trends, Implications &Strategies for Balanced Growth in the Atlanta Region*, 2001. *http://www.metroatlantachamber.com/macoc/img/logo_LandUseDevelopment.pdf*

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[31] U.S. Environmental Protection Agency, *EPA and States Not Making Sufficient Progress in Reducing Ozone Precursor Emissions In Some Major Metropolitan Areas*, September 29, 2004, quoting from "Results in Brief"

Two for the Price of One: Clean Air and Smart Growth

December 1-2, 2004 Sacramento, CA

*** FINAL PRIMER ***

Attachment 2:

OVERVIEW

The Local Government Commission (LGC) and the Center for Clear Air Policy (CCAP), under a cooperative agreement with the U.S. Environmental Protection Agency (EPA), are bringing together a cross section of high-level professionals for two intensive days of facilitated discussions, informative presentations and group problem solving. The goal of this forum is to provide concrete recommendations to the EPA and other federal, state and local entities on how to improve clean air programs, policies and processes in a way that will support both sustainable land use and emission reduction goals.

A growing awareness among air pollution experts and transportation and land use planners is that suburban sprawl is a significant contributor to poor air quality. Understanding this connection and, more specifically, what role air regulations play in influencing land development can lead to innovative policy solutions.

This primer provides background information on the core issue areas that we will discuss at the forum: 1) Clean Air Act structure and the federal policy framework as it relates to the implementation of smart growth and other state and federal air quality and transportation policies and programs, 2) Transportation planning and emissions modeling, and 3) Implementing land use and air quality policies and programs. We look forward to further discussing these important topics in Sacramento, California on December 1 and 2, 2004.

INTRODUCTION: VEHICLE EMISSIONS AND SPRAWL

A recent U.S. Environmental Protection Agency (USEPA) report notes that 159 million people – over half of the population of the United States - live in areas with poor air quality.[32] Asthma, cancer, heart disease, and premature deaths are just some of the health impacts that have been linked to air pollutants, while environmental impacts include smog, acid rain ozone depletion and climate change. States and localities are having an increasingly difficult time at reaching air quality targets, due in no small part to the rapid growth in driving in our ever-sprawling metropolitan regions.

While power plants and industrial manufacturers are some of the largest polluters in the United States, the impact of mobile source emissions, especially those emanating from the tailpipes of cars and SUVs is the fastest-growing source of CO_2 emissions and continues to be a major source of other emissions. Pollutants attributable to the transportation sector include the following.

- *Carbon Monoxide (CO)* is a colorless, odorless pollutant produced when fuels are not completely combusted. According to the EPA, mobile sources account for over 75% of CO pollution in urban areas.
- *Ground-level Ozone* is not directly emitted by mobile sources, but is a product of a chemical reaction involving nitrogen oxides (NOx), volatile organic compounds (VOCs)

[32] EPA, Office of Inspector General, *EPA and States Not Making Sufficient Progress in Reducing Ozone Precursor Emissions In Some Major Metropolitan Areas*, September 2004.

and sunlight. Mobile sources contribute 30-50% of all NOx and VOC emissions, depending on the area.

- *Particulate Matter (PM)* is the term for airborne solid or liquid emissions. Mobile sources account for approximately 30% of PM emissions with diesel engines accounting for over half of that total.[35]
- *Greenhouse Gases (GHGs)* are heat trapping gases responsible for global warming. The transportation sector produces multiple GHGs including carbon dioxide (CO_2), methane, and nitrous oxide. The transportation sector accounts for almost one-third of U.S. CO_2 emissions.[34]

The health and environmental impacts of air pollution and sprawl have been increasingly well documented.[35] A report by the American Lung Association found that air pollution in urban regions has resulted in the proliferation of respiratory illnesses that has contributed to death of over 70,000 people annually.[36] Other health impacts linked to air pollution include: cancer, premature death, high blood pressure, arthritis, headaches, and breathing difficulties. Researchers also find children, the elderly, minorities living in urban areas, and those with weakened immune systems are most likely to feel the brunt of health complications associated with poor air quality. Smog, acid rain, ozone depletion and climate change are just a few of the environmental impacts associated with the release of vehicle emissions into the atmosphere.

Transportation emissions are the result of three main factors; vehicle technology, fuel characteristics and vehicle miles traveled (VMT). Dramatic progress in emissions control technology and fuel quality has reduced emissions over the past 30 years *per mile* for NOx, VOCs and CO (but not for CO_2). But rapid growth in the amount of driving is offsetting these reductions, especially in some fast-growing regions. In the case of CO_2 per vehicle, fleet-wide vehicle emission rates have been essentially stagnant since 1991while VMT grew 25% over the same period.

As seen in Figure 1, long-term growth in driving is expected to outpace the emissions benefits of vehicle technology improvements.

The new California CO_2 emission standards (if they survive likely legal challenge), will result in fleet-wide savings of 27% in 2030 – still not enough to keep up with VMT growth. Thus, while we must continue to make progress on vehicle technologies and fuels – and policies to implement them – we must also assess the extent to which we can mitigate growth in VMT.

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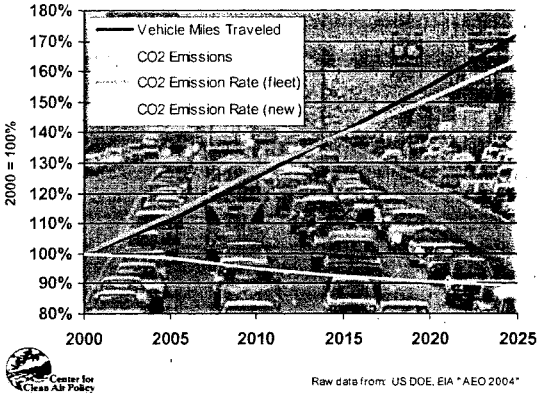
[33] US EPA, Air Emissions Trends - Continued Progress Through 2003. See, http://www.epa.gov/airtrends/econ-emissions.html.

[34] *US EPA,* Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2002. *See, http://yosemite.epa.gov/oar/globalwarming.nsf/content/ResourceCenterPublicationsGHGEmissions.html*

[35] For a good overview see: Frumkin, H., Frank, L. and R. Jackson, *Urban Sprawl and Public Health: Designing, Planning and Building for Healthy Communities*, 2004.

[36] American Lung Association http://www.lungusa.org/atf/cf/%7B7A8D42C2-FCCA-4604-8ADE-7F5D5E762256%7D/key_air.pdf

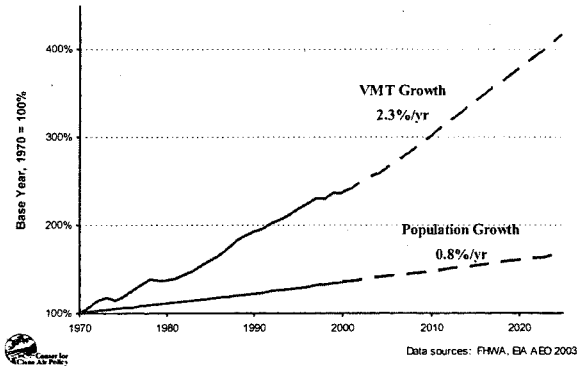
Figure 1. Growth in Travel Outstripping Vehicle Emission Improvements



Urban Development and Vehicle Emissions

What is driving this rapid growth in VMT? In 1992, a U.S. Department of Transportation (USDOT) study indicated that population growth was responsible for only 13% of the increase in VMT.[37] This is reinforced by recent studies that forecast VMT growth continuing to outstrip population growth, as seen in Figure 2 below.

Figure 2. Growth in Travel Outstripping Population Growth



[37] USDOT, 1992. *Travel Behavior Issues in the 90's.*

Other factors contributing to growth in driving that were highlighted in the 1992 USDOT report include: increase in trip lengths, increase in trips taken, decrease in vehicle occupancy, and switch to driving (from other modes of travel). Other studies have attributed historical VMT growth to factors such as economic growth, increasing ratio of drivers to population, rapid suburbanization and dispersed development, and the Federal Highway Act of 1956. Road capacity expansion can also increase VMT through induced travel, and by easing access to more distant locations.

It has become increasingly evident that land development and location patterns contribute to growth in VMT. The underlying reasons are intuitive. In typical suburban development patterns, origins and destinations are farther apart, land use functions are isolated (residential, commercial, employment), infrastructure design is oriented toward the automobile, and low population densities are not conducive to public transportation.

But we can move beyond intuition. Recent studies quantify the relationship between land use and VMT. An analysis of 83 metropolitan regions around the country by Ewing et. al concluded that the degree of sprawl was the strongest influence on vehicle-miles traveled per person – more than metropolitan population growth and per capita income.[38] On a household-basis, Frank concluded that households located in the most interconnected areas of Seattle generated less than half the VMT of households located in the least connected areas of the region, and that the findings hold true after controlling for household size, income, and vehicle ownership.[39] Holtzclaw et al. found that increased accessibility correlates with decreased vehicle use and ownership based on a study of six million households in Chicago, San Francisco, and Los Angeles.[40]

Based on these studies, it is clear that people generally drive less in areas that incorporate the principles of smart growth: higher residential density; a mix of jobs, stores and housing; high-quality transit service; transit-oriented development; good street connectivity that makes neighborhoods pedestrian friendly; and strong activity centers where destinations are close together. Two questions then arise. 1) What impact can smart growth policies have on VMT? 2) Do we have the policy tools to retrofit existing communities according to smart growth principles and target new development into efficient, well-designed locations? We answer the first question below and explore the second question in the implementation section of the paper.

How Much Can We Slow VMT Growth?

Depending on scale, individual projects can generate significant benefits. For example, the Atlantic Station infill redevelopment project uses mixed-use, transit-oriented development and is projected to result in 14 to 52 percent lower VMT than had the development occurred in a suburban location with conventional density, mix of uses and design. Figure 3 highlights

[38] Ewing, R., Pendall, R., and D. Chen. *Measuring Sprawl And Its Impact Volume I.* October 2002.
[39] L. Frank, "Land Use Impacts on Travel Choice and Vehicle Emissions in the Central Puget Sound: Methodology and Findings," *Transportation Research - Part D., March 2000.*
[40] Holtzclaw, J., Clear, R., Dittmar, H., Goldstein, D, and P. Haas, "Location Efficiency: Neighborhood and Socioeconomic Characteristics Determine Auto Ownership and Use – Studies In Chicago, Los Angeles And San Francisco," *Transportation Planning and Technology*, 2002, Vol. 25, pp. 1–27.

projected VMT reductions (and associated air quality benefits) from urban infill projects vs. comparable greenfield sites.

Figure 3. Site-Level VMT and Air Quality Benefits:
Infill vs. 'Greenfield' Developments[41]

Location	Description of TOD / infill site	VMT Reduction	Emissions Reduction
Atlanta, GA	138-acre brownfield, mixed-use development project	14 - 52%	37 - 81% NOx 293 - 316% VOC
Baltimore, MD	400 households and 800 jobs on waterfront infill development	55%	36% VOCs 40% NOx
Dallas, TX	400 housing units and 1500 jobs located 0.1 miles from the Dallas Area Rapid Transit (DART)	38%	43% VOC 48% NOx
Montgomery County, MD	Infill site near major transit center	42%	31% NOx
San Diego, CA	Infill development project	52%	42% NOx
West Palm Beach, FL	Auto-dependent infill project	39%	28% NOx

MPO studies from around the country show potential regional and statewide VMT reductions ranging from 3-20 percent, as seen in Figure 4. The VMT savings from these analyses are a result of a combination of transit improvements, land use modifications and complementary policies such as open space protection and measures (including in some cases, congestion pricing, zoning, etc).

Despite these promising figures, as long as suburban development continues to segregate our homes from every other aspect of daily life and continues to be built at densities unsuitable for effective and efficient transit service, the rate of VMT will continue to climb. Compounding the situation is the traditional approach of building new roads in order to alleviate traffic congestion. These new roads and new lanes result in induced demand where more drivers fill up the space and there is more driving overall. This phenomenon is largely due to the new roadways opening up access for new development, and consequently new destinations and increased driving distances. Various studies show that each 10 percent increase in metropolitan-area lane-miles leads to a 4- to 9-percent increase in travel demand over the long-term.[42]

[41] Data from: U.S. EPA. *Comparing Methodologies to Assess Transportation and Air Quality Impacts of Brownfields and Infill Development.* August 2001.

[42] *Working Together to Address Induced Demand.* Eno Transportation Foundation, Washington, D.C., 2002 p. 16.

Figure 4. Regional VMT Reductions from Smart Growth and Transit[43]

Study Location	Regional VMT Reduction	Timeframe
Albany	7 - 14%	2000 – 2015
California	3 - 10%	2000 – 2020
Portland	6 - 8%	1995 – 2010
Puget Sound	10 – 20%	2000 – 2020
Sacramento	25%	2005 – 2050
Salt Lake City	3%	2000 – 2020

THE FEDERAL REGULATORY AND LEGISLATIVE FRAMEWORK

The Clean Air Act and the Transportation Equity Act for the 21st Century plays a significant role in influencing mobile source emissions.

The Clean Air Act (CAA)

Developed in 1963 to combat air pollution, with important amendments in 1970 and 1990, the Clean Air Act required the EPA to set National Ambient Air Quality Standards (NAAQS) for all major criteria pollutants at limits for pollution deemed necessary to protect public health and welfare. All states were expected to develop and implement air pollution control plans called State Implementation Plans (SIPs). Through the SIPs, those not meeting the NAAQS need to demonstrate either attainment with NAAQS or a path to attainment – i.e., each state must assess its current air quality and then design a plan that shows how it will meet federal air quality requirements for stationary and mobile source emissions. The CAA requires each state to adopt and submit a plan that would "implement, maintain, and enforce" primary standards within three years after the promulgation of the NAAQS and subsequent area designations.[44]

The 1970 Clean Air Act amendments underwent major revisions in 1990 after Congress recognized the inadequacy of the CAA to fully account for mobile source emissions. The 1990 Clean Act Amendments set new standards for NAAQS and categorized the level of non-attainment with NAAQS based on severity. The levels are: extreme, severe, serious, moderate and, the least severe, marginal. Each category comes with a different set of requirements and deadlines for improving air quality. For nonattainment areas, SIPs must specify local, state, regional and federal regulations necessary for the area to demonstrate attainment of the NAAQS.

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[43] Capital District Transportation Committee, *New Visions 2021*, Draft approved October 2000.
Cambridge Systematics, Inc. and Parsons, Brinckerhoff, Quade & Douglas. *Making the Land Use Transportation Air Quality Connection: Analysis of Alternatives*. Vol. 5. Prepared for Thousand Friends of Oregon. May, 1996.
Parsons Brinckerhoff, for the California Energy Commission, *California MPO Smart Growth Energy Savings MPO Survey Findings*. September, 2001. Apogee/ Hagler Bailly, for the US EPA, *The Effects of Urban Form on Travel and Emissions: A Review and Synthesis of the Literature*. April 1998.
[44] CAA § 110.

Another key feature of the 1990 Amendments is that it, along with subsequent transportation legislation, required air quality and transportation officials to work together through a process known as conformity.

Conformity

Under the 1990 CAA Amendments, a metropolitan region that has exceeded the emission standards for one or more of the pollutants must show that the region's transportation plan will conform to applicable SIPs and contribute to timely attainment of the NAAQS. According to the regulations, a proposed project or program must not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS.[45] The metropolitan planning organizations (MPOs) must demonstrate this conformity through their transportation plans and transportation improvement programs (TIPs) – which identify major highway and transit projects the area will undertake over a 20-25 year period. A conformity determination must be updated at least every 3 years, and typically is undertaken more frequently on a voluntary basis when MPOs update their TIPs, which must be updated at least every 2 years. Conformity is required to ensure continued consistency between transportation plans and the emissions budget established in the SIP.[46] Projects that do not conform cannot be approved, funded or advanced through the planning process, nor can they be implemented unless the emissions budget in the SIP is revised. MPOs in search of additional SIP-eligible or conformity eligible emissions reductions have often changed modeling assumptions or modified/expanded their Transportation Control Measures or other projects included the TIP.[47] Since under current law the Regional Transportation Plan (RTP) review process must be repeated at least every three years, conformity is a key strategy to periodically relate the SIP emission limits to the funding plan in the TIP/RTP, helping to ensure continued progress for cleaner air. This 3-year review cycle matches the requirement in the Clean Air Act that every 3-years non-attainment areas update their pollution emission inventories, which should support periodically required SIP compliance demonstrations. Unfortunately, EPA has failed to issue SIP compliance demonstration guidance as also required by the Clean Air Act.[48]

If a region's TIP has expired without adopting a new TIP projected to stay within the the motor vehicle emissions budget in the SIP, the area faces what is known as a conformity lapse. During this period, the MPO cannot approve funding for new transportation projects or new phases of previously funded transportation projects except for those projects that are adopted as Transportation Control Measures in the SIP or are otherwise exempt from conformity as air quality neutral activities.[49] If an area fails to submit a required SIP by a deadline, it may face a "conformity freeze", in which it cannot approve any new projects until this deficiency is remedied, and if this failure is prolonged, can face the ultimate sanction of losing federal transportation funding. For some metropolitan areas, this potential loss of transportation funds

[45] U.S. EPA, "Transportation Conformity Rule Amendments: Flexibility and Streamlining," Final Rule, 62 Federal Register 43780, August 15, 1997.

[46] New projects and plans cannot, under the conformity provisions of the 1990 CAAA "increase the frequency or severity of any existing violations" or "delay timely attainment of any air quality standard."

[47] Congressional Research Service, Report for Congress, *Transportation Conformity Under the Clean Air Act: In Need of Reform?* Updated April 23, 2004 by James E. McCarthy.

[48] EPA, Office of Inspector General, *op cit.*

[49] The list includes 20 categories of highway safety projects, rehabilitation and reconstruction of transit facilities, purchase of replacement buses and rail cars, noise attenuation projects, and pedestrian and bicycle facilities.

can be more than $100 million per year.[50] While conformity problems can be temporarily disruptive to agency work programs, according to testimony by Jeff Holmstead, the EPA Associate Administrator, to the Senate Environment and Public Works Committee in 2002, no state or region has ever lost federal transportation funds as a result of a conformity lapse, freeze, or sanctions. While there have been 63 areas in the US that have suffered a conformity lapse, the most well-known occurred in Atlanta, GA and lasted from 1998-2000. This served as a wake up call for the region's public and private institutions, spurring on initiatives to identify and address the interrelated issues of air quality, transportation, quality of life and land use.

New Standards and Requirements

The new 8-hour ozone standard shifted 31 areas into nonattainment status for the first time.[51] The MPOs for those areas are learning new and often complex conformity regulations, making the issue of SIP and TIP conformity more relevant than ever for MPOs (and in rural areas without and MPO, the state DOTs).[52] In addition new project level emissions analyses for $PM_{2.5}$ and CO will be required, including the use of new models and/or analytical techniques.[53]

> *Environmental groups have raised concerns about the potential for backsliding on existing clean air protections in the transition to the new NAAQS. EPA is revoking the existing 1-hour ozone standard designations in April 2004 years in advance of the time when attainment SIPs will be in place under the new 8-hour ozone standard. Due to long delays in the regulatory process implementing the 1990 Clean Air Act, it is only since 2000 that most of the more seriously polluted metropolitan areas have had in place motor vehicle emission budgets drawn from attainment SIPs for the 1-hour ozone standard and these have been increasingly effective in focusing attention of transportation officials on the air quality consequences of transportation plans and programs. Environmental groups are concerned that the transition to the 8-hour standard is being used to create opportunities for many seriously polluted regions to substantially loosen the limits on transportation emissions, allowing approval of massive sprawl, traffic, and pollution inducing highways between now and the deadline for new 8-hour ozone SIP submissions in 2007. Environmental groups have raised concerns that EPA's conformity rule would allow MPOs in some circumstances to set aside the motor vehicle emission budgets established in current SIPs and to substitute a less rigorous build/no-build test for demonstrating conformity that could allow motor vehicle emissions to increase in fast-growing regions.*
>
> *EPA's revised conformity rule does not adopt criteria and procedures for determining whether a new transportation facility such as a bus or truck terminal or an expanded freeway or interchange will cause the NAAQS for PM2.5 to be violated in neighborhoods*

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[50] Air Quality Management in the United States, Committee on Air Quality Management in the United States Board on Environmental Studies and Toxicology, Board on Atmospheric Sciences and Climate Division on Earth and Life Studies, National Research Council of the National Academies, January 2004.

[51] From http://www.epa.gov/ttn/oarpg/t1/fact_sheets/o3fact.pdf "Fact Sheet: EPA's Revised Ozone Standard"

[52] Once designations and classifications take effect on June 15, 2004, states and communities must prepare a plan to reduce ground-level ozone. See map, http://www.epa.gov/ozonedesignations/nonattaingreen.htm

[53] Replogle M., Dr. John Balbus, M.D., and Tracy Freuder, "Proposed EPA Conformity Rule Would Allow Increased Pollution From Highways, Threatening Public Health: A Review of Impacts in 12 Cities," Dec 2003.

adjacent to the facility, although the agency has suggested further rules may address this issue. This is an issue of growing concern to health and environmental groups in the wake of recent studies showing that those living close to such facilities often experience health-threatening exposures to air pollution. EPA's guidance on siting PM2.5 monitors explicitly calls for such monitors not to be located in close proximity to PM2.5 line and point sources, raising concerns among environmental and health groups about the degree to which PM2.5 non-attainment area designations and SIP design values will account for population exposures to PM2.5 hot spots.

And environmental groups are concerned that EPA has not addressed problems raised by FHWA's interpretation of the conformity rule in Atlanta, where an area's transportation program and plan was found to conform even though its motor vehicle emissions exceeded the adopted attainment SIP emission budget after the attainment year following a prolonged conformity lapse that had not been remedied, exacerbating an ongoing violation of the NAAQS. If this is not remedied, environmental groups believe, the ability of the conformity process to ensure that the spending program in the TIP and RTP will not lead to the failure of the SIP will be severely compromised, harming public health and delaying timely attainment of the NAAQS.

Transportation Equity Act for The 21st Century (TEA-21)
In 1991, the 102nd Congress passed the Intermodal Surface Transportation Equity Act (ISTEA), which was renewed in 1998 as Transportation Equity Act for the 21st Century. These ground-breaking pieces of legislation were a new and improved way to fund the nation's transportation programs, and provided a framework for the transportation conformity requirements in the 1990 CAA Amendments. The legislation allows states, metropolitan planning organizations and local groups to obtain federal funds to meet their local planning needs and to better mitigate air pollution. Further, along with assigning timelines and providing flexible funding for transportation plans – including guarantees for transit spending – specific pools of dedicated funding were directed to various programs including Congestion Mitigation and Air Quality Improvement Program (CMAQ).

Congestion Mitigation and Air Quality (CMAQ)
One important aspect of TEA-21 has been the CMAQ funding which was created for projects that have measurable air quality benefits. Under TEA-21 CMAQ provided $8.1 billion over six years to help states meet the NAAQS.[54] CMAQ funds cannot be spent on highway capacity-increasing projects for single occupant vehicles. The federal program has been well-received by MPOs and has funded some projects with clear and lasting air quality benefits, including transit, freight rail and commuter trains, as well as alternatively fueled vehicles and refueling sites, ferries and clean diesel fuel programs, and pedestrian/bicycle improvements.[55] Despite this long list of measures, the US DOT notes that, "the most effective CMAQ funding projects tend to be large in scope and those that directly affect vehicle emissions, for example, Inspection and Maintenance."[56]

[54] CMAQ Final Implementation Guidance 23 USC, 315; sec 1110 *Federal Register*, Vol. 65, No. 36, Feb 23, 2000.
[55] http://www.ampo.org/policy/pdfs/REVISEDapril3-TestimonialsfromtheMPOCommunity.pdf
[56] The Congestion Mitigation And Air Quality Improvement Program, US DOT, FHWA-EP-00-020

There is a concern that many states have failed to take full advantage of the CMAQ program. Nationally, over the first ten years of the program, only 81 percent of the funds apportioned to the states have been obligated to CMAQ; at the same time, many states actually overspend on traditional highway programs.[57]

Federal Transportation Funding Formulas
Federal transportation funding formulas offer a perverse incentive that rewards sprawl and encourages vehicle emissions, as they are based upon state VMT, fuel sales and lane-miles. In effect, the more driving that occurs in a state, the more federal highway money it is likely to receive.[58]

Flexible Transportation Funds
In the first four years of ISTEA authorization, most states that flexed funds for transit contained the largest urban areas; these included: California, $410 million; Massachusetts, $127 million; New York, $580 million; and Pennsylvania, $263 million. Further, after reauthorization of ISTEA to TEA- 21, states and local authorities flexed $8.5 billion from highways to transit and only $40 million from transit to highways.[59] However, according to a 2000 STPP report, most states spend most of their "flexible" federal transportation funds on roads, with less than seven percent going toward transit, bikeways, or sidewalks.[60] A 2003 Brookings Institution analysis concluded that metropolitan areas are more likely flex money to transit than are state DOTs, and recommended that more federal transportation funding be directly allocated at the metropolitan level.[61]

Potential Changes from Reauthorization
A number of proposals have been floated in the House and Senate debates on the latest version of the federal transportation funding bill (SAFETEA) that would impact and potentially weaken the conformity process. For example, a proposal to require conformity determinations to be made every 5 years instead of the current 3 years would reduce the level of coordination between MPO officials and air quality regulators. Another proposal would reduce the planning horizon for long range transportation plans from 20 to 10 years. A concern here is that this shorter time frame would miss the development impacts from, for example, outer beltways, which can take more than 10 years to fully manifest and would thus not be captured in the plan.

Another proposal would cause conformity to apply only to regionally significant projects, rather than to the entire TIP and RTP, exempting smaller projects that might otherwise trigger hot-spot analysis requirements or that might cumulatively produce regionally significant emissions impacts. Yet another proposal would allow transportation agencies to modify Transportation

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[57] Surface Transportation Policy Project, "The CMAQ Program: Funding Cleaner Air: More than $2 Billion of Unused Potential," January 2003. http://www.transact.org/library/cmaq.asp
[58] Center for Clean Air Policy, Center for Neighborhood Technology, Surface Transportation Policy Project, *Climate Matters: The Case for Addressing Greenhouse Gas Reduction In Federal Transportation Policy*, 2003.
[59] http://www.cts.umn.edu/events/oberstarforum/2003/2003oberstarspeech.html
[60] Surface Transportation Policy Project, *Changing Direction: Federal Transportation Funding in the 1990s.*," March 2000. http://www.transact.org/PDFs/changing_direction.pdf
[61] Brookings Institution, *Improving Metropolitan Decision Making in Transportation: Greater Funding and Devolution for Greater Accountability*, October 2003. http://brookings.edu/dybdocroot/es/urban/publications/200310_Puentes.pdf

Control Measures in SIPs without any oversight or approval from local, state or federal environmental agencies.

A proposal to fast-track environmental reviews would empower the Federal Highway Administration to ignore transportation, land use, and air quality plans adopted by metropolitan planning organizations, state and local elected officials, when selecting alternatives for consideration in the environmental review process under the National Environmental Policy Act (NEPA). That proposal could also sharply curtail consideration of alternatives to new highways in the NEPA process if these do not fully satisfy narrowly written purpose and need statements adopted by highway project sponsors, thereby excluding consideration of Smart Growth options, increased investment in transit and other alternative modes, and improved traffic operations and management through pricing of existing highway lanes or improvements to existing highways.

LINKING LAND USE AND AIR QUALITY

The idea of including land use in the federal regulatory framework has already begun to take hold. Land use assumptions are used to help estimate regional travel demand and emissions for TIPs, SIPs and conformity determinations. However, MPOs generally assess a single land use scenario and seldom analyze the potential benefits of alternative development patterns. In 2001, the US EPA issued guidance titled, Improving Air Quality through Land Use Activities, to assist states in formally obtaining SIP credit for sustainable land use policies including brownfields and infill development.[62] The only two examples to date are the state of Maryland, which has quantified the benefits of their smart growth efforts near Baltimore and included them in their SIP,[63] and Texas, which has obtained limited credit for land use measures in the Houston-Galveston area.

A report prepared by the U.S. General Accounting Office (GAO) may offer some insight as to potential reasons for the lack of interest in approaching land use as a strategy to control emissions.[64] In October 2001, Congress asked the U.S. GAO to survey state and local transportation planners on the issue of land use and air and water quality. Survey results prompted the GAO to report that state and local officials wanted the federal government to provide the following:

- Financial incentives for transportation, environmental and land use officials to collaborate on more protective land use strategies
- Technical assistance to assess and mitigate land use impacts
- Public education on the environmental impacts of land use and transportation decisions[65]

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62 US EPA, *Final Policy Guidance: Improving Air Quality through Land Use Activities.* EPA420-R-01-001 Transportation and Regional Programs Division, Office of Transportation and Air Quality January 2001 U.S. EPA http://www.epa.gov/otaq/transp/conform/policy.htm#landuse, January 2001. Please also see, www.epa.gov/otaq/transp/landguid.htm. This formal guidance has rarely been used by MPOs, who cite modeling complexities, enforcement uncertainties and low-emission impacts for small scale projects as barriers.

63 Liu, Feng, "Quantifying Travel and Air Quality Benefits of Smart Growth in State Implementation Plans." Transportation Research Board Annual Meeting, January 2003.

64 GAO, *Federal Incentives Could Help Promote Land Use That Protects Air and Water Quality*, Oct. 2001

65 Ibid. (p.1)

The GAO report is significant because it acknowledges that cleaner cars and fuels will only improve air quality so far and that in congested and growing areas, land use alternatives will need to be considered to reduce the reliance on cars.

Nonattainment Area Designations Impacts on Land Use and Stationary Emissions
An important question to be considered is what impact do New Source Review and nonattainment designation policies in the CAA have on land use? U.S. States must designate as nonattainment those geographical areas that monitor violations of one or more of the six NAAQS or contribute to violations in other areas. Especially in the case of ozone, the number of control measures that apply are based on the severity of the air quality violation. Because of the more stringent requirements in nonattainment areas, local elected officials and organizations, such as chambers of commerce, are often concerned about the adverse impact that a nonattainment designation has on economic growth, such as the need for and availability of new manufacturing sources to obtain emissions offsets, and the potential delay of highway funds for improvement projects that can result when an area cannot demonstrate conformity with state air quality improvement plans.

Specifically, local organizations worry that owners of new manufacturing facilities will choose to locate in areas just outside of the nonattainment boundary where the environmental requirements are less costly, thereby creating new jobs outside of the urban core rather than in it. Because of these concerns, there is often pressure to make the size of the nonattainment area as small as possible. Some have argued that nonattainment boundaries indirectly contribute to sprawl. Their reasoning is that if large new employers locate their new facilities outside of nonattainment boundaries, the new jobs created will lead to increased residential and commercial development, including more roads. Hence, this means more sprawl. A greenfield site in a rural area, costing less and with lower taxes, can be an attractive option for a company trying to decide where to locate a new major stationary source. Add to that the difference between offsets, which a major source must obtain to offset emissions increases, the increased costs of more stringent air pollution control equipment required by the Clean Air Act's New Source Review program, and possible costs associated with cleaning up a brownfields site, then in total the costs for locating on a brownfields or grayfields site, instead of a rural area, may be more.

Though it may be more economical to locate in a rural setting, the cost to the community of a greenfield site can be high. Greenfield sites may not have the infrastructure to support the needs of a commuting population that suddenly needs to get to a rural workplace. The land may not be zoned to allow mixed-use development near the new site, requiring workers to commute long distances to get to their jobs. On the other hand, sources that locate inside the nonattainment area, particularly within the urban core, are tapping into the roads, transit, sewer and water lines that already exist or can be improved, as needed. Using existing infrastructure is cost-effective because using resources that are already there saves scarce tax dollars. If one of the goals of smart growth is to get sources to locate in nonattainment areas, particularly in the urban core where jobs are needed and the infrastructure is already there to support development, then incentives are needed to make this as attractive as possible to those wanting to build a new major source of air pollution

TRANSPORTATION PLANNING AND EMISSIONS MODELING

Accounting for Land Use in the Travel Modeling Process

When doing regional planning and conformity analyses, most MPOs use regional transportation models known as travel demand models (or forecasting models). These complex tools use a series of mathematical equations to represent the supply and demand for regional travel. The most widely used methodology for this analysis is often called "the four-step model", which encompasses trip generation, trip distribution, mode choice, and trip assignment. The first three of these steps estimate the demand for travel and the fourth step then allocates the demand for travel with the supply of travel (i.e., road or transit network).

An increasing number of metro areas are shifting to a new generation of more policy-sensitive models that also account for how changes in transportation services, facilities, and operations influence the time-of-day-of-travel, the distribution of jobs and housing, motor vehicle ownership and vehicle choice, and other factors. While the 4-step models, in use since the 1960s, focus on zone-based aggregate analysis of travel behavior, many of these more advanced models seek to account for travel behavior at the individual and household level for at least a portion of the analysis process, capturing the dynamics of journey tours, the allocation of time to different activities in households, interactions between household members, and factors influencing real estate markets and investment decisions. Recent developments such as the TRANSIMS program and advanced versions of commercial applications software like TransCAD and VSIM are creating the capability to also simulate the operation of individual vehicles on highways at the corridor and regional level, which may prove fruitful in coming years for refined evaluation of transportation system operations and performance, including emissions analysis.

To produce estimates of motor vehicle emissions, the outputs of the travel modeling process are typically linked to a post-processor program which produces estimates of vehicle miles traveled by road way link and speed by time-of-day. This in turn is linked to the US EPA's Mobile model (or EMFAC model in the case of California) which contains complex mobile source emissions factors that calculate the resulting NOx, PM, VOCs and other criteria pollutant emissions for the MPO region. EPA has under development a newer more disaggregate emissions model, MOVES, that is designed to take advantage of information produced by the more advanced travel models, potentially linking to traffic microsimulation models in the future.

There is a growing recognition of the need to better account for land use within the travel modeling process, in part to better estimate regional transportation emissions on account of conformity. In 4-step models, land use is an exogenously assumed basic input, developed by local planning officials through a process of negotiation. This approach often reflects the land use outcomes *desired* by local politicians, while discounting other factors that are known to influence development patterns, such as travel accessibility and traffic congestion. There are a number of models that address this shortcoming through integrated modeling of both transportation and land use, although they are thought to be used in fewer than twenty metropolitan areas. [66, 67]

[66] These include UrbanSim, TRANUS, MEPLAN, DRAM-EMPAL, METROSIM, PECAS and MetroScope.

Specific Local Limitations of Travel Models

Beyond the broad focus of accounting for regional land use patterns, there are several areas where today's travel models have several areas where they are unable to estimate local travel choices or land use patterns. These include:

- **Localized travel patterns.** Regional forecasting models do a poor job of accounting for localized travel and land use patterns, including mixed use development and local transit services. This is primarily due to the spatial scope of these models. Travel demand models divide regions into hundreds or thousands of geographic units called transportation analysis zones (TAZs). Thus, travel demand models are designed to forecast trips length and type between TAZs but are less able to account for shorter trips taken within TAZs.
- **Non-motorized trips.** The spatial limitations cited above mean that travel demand models are also extremely limited when it comes to accounting for nonmotorized trips (i.e., walking or biking). For example, in Atlanta, GA a mixed-used, infill development called Atlantic Station has received accolades for its travel and emissions benefits; site-specific studies have found half the VMT and significant reductions in NOx and VOCs vs. a comparable greenfield site.[68] However, a typical regional travel model would likely fail to estimate the full richness of benefits from an Atlantic Station-type development by not accounting for newly generated walking and biking trips taken within the TAZ, which are created in part from the mixed-use element of the site.[69]
- **Local site and roadway design.** Travel demand models fail to capture other local aspects of so-called smart growth development, such as traffic calming (especially in and around intersections), building site design (again mixed-use characteristics), the differences in traffic capacity of dense interconnected grid street networks vs. more hierarchical cul-de-sac and arterial networks, and other road characteristics of smart growth neighborhoods.
- **Induced Demand.** Building a new road often reduces travel time, which can cause people to travel further and lead to further regional decentralization. This phenomenon, known as induced travel, is only partially represented in most travel demand models – despite evidence that it significantly contributes to growth in VMT and emissions. More advanced tour and activity based models linked to land use models have a greater potential capability to represent the full array of behavior linkages that together contribute to induced travel.

So while travel models are the best tools we have for forecasting travel patterns on a regional scale, it is clear from the examples cited that they also may fail to capture some VMT reductions (and emissions benefits) from local smart growth developments. Independent appraisals of MPO traffic models by environmental groups have also suggested that technical shortcomings of some

[67] It's also worth noting that land use projections from these models are not typically "official," and are generally revised by local planning officials.

[68] http://www.epa.gov/smartgrowth/topics/atlantic_steel.htm

[69] The Atlanta Regional Council's (the local MPO) travel demand model included some adjustments as well as off-line analyses to estimate the VMT and emission benefits from the Atlantic Station development. Other less-high profile projects are less likely to see this time and effort.

of these models may also lead them to overestimate the benefits of sprawl and road system expansion.

Microscale Sketch Models
In part to fill the gaps inherent in regional modeling, planners and developers have built computer-based tools to simulate the travel and emissions impacts of small scale, site-specific developments. While more simplistic than regional 4-step models, these 'local' models give a rough sense of how local land use impacts emissions by capturing such elements as: site design; local transit service; mix of uses; and other characteristics typically associated with smart-growth style developments. This is important because such developments may support densities that will ultimately bolster transit, walking and biking options locally and which, long-term, may even provide regional benefits (e.g., reduced congestion) from more diverse, sustainable transportation networks. Further, these tools often allow the public to visualize the design, density and environmental impact of local planning decisions.

Two examples of this type of tool are PLACE3S and Smart Growth Index. Both of these desktop models allow planners to look at different types of densities (housing and jobs), transit service and other land use characteristics like street design. The use of scenario-based tools can also help educate the public by letting them "see" the impact of land use changes. It is no coincidence that these tools estimate the travel and emissions benefits that the larger models miss. These microscale models can fall short, however, when it comes to capturing the VMT or emissions impacts from either changes in regional location or adjustments to regional transit service (i.e., LOS changes or inter-TAZ route adjustments). While these computer simulations are not perfect, using them in conjunction with regional travel models can help MPOs better illustrate the benefits of local land use decisions. For example, SACOG is utilizing PLACE3S to link local land use patterns with its regional travel demand model.

Regional Visioning Scenarios
While public participation is an important part of planning, the public participation component of the transportation planning process has often been an after thought – meaning that the details of the planning process are still typically complex and mysterious to the general public. However, recent advances in visualization techniques including charrettes, board games, and computer simulations have helped engage the public early by allowing them to see how increased density in their community can in fact improve their quality of life by provide housing and retail diversity while adding to the community's bottom line by reducing spending on new infrastructure (i.e., sewer and water lines).

The Blueprint project in Sacramento, California, for example, has been recognized for its use of state-of-the-art Geographic Information Systems (GIS) and web based modeling techniques to provide data on the effects of current and future land use decisions. Participants in community workshops are able to examine the impact of growth scenarios on indicators such as traffic congestion, air pollution, employment, housing availability and open space in order to help design a community vision. This process has determined a preferred growth strategy that will guide development in the Sacramento region and ultimately be integrated into the region's

LRTP. Initial quantified estimates of Blueprint's preferred growth alternative show reductions of up to 25 percent in per capita VMT and 15 percent of criteria pollutants.

Another example of good public participation is Envision Utah, which was an award-winning public-private partnership with a mandate to address the implications of rapid predicated growth surrounding Salt Lake City. This effort provided a group of public stakeholders with a series of visual scenarios to help them better see expected growth patterns and decide on how to best allocate population and employment patterns (with supportive transit services) over the next 30 years. The result of this effort was that residents chose the second densest development scenario (out of four separate alternatives provided by planners) that included strong transit and land use components.[70] In addition to environmental benefits, this scenario was projected to save $4.5 billion in infrastructure costs through 2020. This process demonstrates that people are not fearful of density when they are able to visualize where and how density can impact the region's environmental and economic bottom line. Such visualization planning process may ultimately benefit air quality and planning interactions.

The Need for Regional Scenario Analyses

Most transportation planners agree that good planning requires a proper regional perspective coupled with strong public input, as seen in the examples above. However, planners are required to analyze alternatives only for specific projects with the TIP but not to the full TIP. The problem with this is that at the local project scale the likelihood of detecting any discernible land-use impact is small. So while federal law (i.e., NEPA) has long required environmental reviews (i.e., consideration of secondary and cumulative impacts) for individual TIP-listed projects, such as a new road or bus route, the full suite of TIP projects is only questioned in the conformity process, as opposed to being considered at an earlier stage in the planning process. Indeed, environmental impact studies, even for mega-projects such as outer beltways, typically fail to consider the impacts of these proposed investments on regional criteria pollutants, such as ozone. Instead, they point to the inclusion of the project in a conforming RTP as evidence that it has no adverse air quality impact, even in cases when the MPO has failed to evaluate the relative impact of the mega-project on air quality compared to a no-build scenario. A change that could fix this, and in turn strengthen the current conformity process, would be (federal legislation) requiring MPOs to include regional alternative scenario analysis in their TIP and RTP updates. If MPOs were required to generate alternative scenarios at the regional scale to help officials consider various planning factors and opportunities to avoid or minimize various adverse impacts of project and plan investments while maximizing satisfaction of regional and federal objectives, the benefits of comprehensive smart growth planning would be readily apparent.

The FHWA metropolitan planning rules, 23 CFR 450.316(a)(13), require that the regional transportation plan -

> explicitly consider, analyze as appropriate, and reflect in the planning product:
>
> *(13) the overall social, economic, energy, and environmental effects of transportation decisions (including consideration of the effects and impacts of the plan on the human, natural and man-*

[70] For more information on the individual scenarios, see http://www.envisionutah.org/index.php?id=NDk5

made environment such as housing, employment and community development, consultation with appropriate resource and permit agencies to ensure early and continued coordination with environmental resource protection and management plans, and appropriate emphasis on transportation-related air quality problems in support of the requirements of 23 USC 109(h), and section 14 of Federal Transit Act (49 USC 1610), section 4(f) of the DOT Act (49 USC 303) and section 174(b) of the Clean Air Act (42 USC 7504(b).

23 USC 109(h) requires that before a project is approved by the Secretary, it must have been analyzed to determine whether it is in "the best overall public interest" taking into account the costs of mitigating the adverse impacts on the environment and the mobility benefits. The Act specifically requires "the possible adverse effects" of "air pollution" to be included in the analysis.

In a case brought by Sierra Club alleging FHWA's failure to address the adverse impacts on public health of emissions from a highway expansion project in Las Vegas, FHWA filed a brief arguing that FHWA was not required to perform this analysis or make this best public interest determination because it had passed the obligation on to the MPOs through this requirement of the metropolitan planning rules. However, it appears that guidance to MPOs on this matter has not been issued and MPOs are doing little to address this matter in their transportation plan revisions or otherwise in the planning process.

Section 134(a)(1) establishes the purposes of the metropolitan planning process and (a)(2) states that MPO plans are to "accomplish" these purposes. However, there is little evidence of MPO RTPs discussing how the purposes related to minimizing fuel consumption and air pollution are accomplished in their respective metropolitan areas. This may be a fruitful area for DOT and EPA cooperation to develop new guidance or rules that encourage consideration of alternatives.

IMPLEMENTING SMART GROWTH AS A CLEAN AIR STRATEGY

Improving air quality through smart growth policies requires comprehensive approaches that can slow growth in vehicle use and associated emissions by providing numerous transportation choices with supportive land use patterns. A comprehensive regional plan developed with serious and inclusive public involvement is a fundamental first step. Without a strong implementation follow-through however, a good plan is little more than pretty maps and drawings. Strong political leadership and adequate funding are especially important to help ensure that good plans go from paper to reality. Below we provide a brief overview of key elements needed to successfully implement smart growth policies.

- Comprehensive regional planning
- Regional cooperation
- Funding for efficient transportation alternatives
- Targeted infrastructure spending
- Incentives to redevelop the center city
- Elimination of regulatory or financial disincentives that encourage sprawl

Comprehensive Regional Planning

Local infill and TOD projects are important elements of smart growth, but controlling regional air pollution requires a comprehensive smart growth approach that addresses land use and

transportation planning over an entire metropolitan area, or even better over an entire urban air shed. As noted above, comprehensive regional smart growth strategies are projected to reduce regional VMT from anywhere between 3-20%.[71]

Regional Cooperation

One of the well-known barriers to efficient land use development is competition among municipalities for tax revenue ("ratables") e.g., from shopping malls or other commercial and industrial operations. For example, local political leaders may fill TIPs with pet projects, often designed to generate constituent-pleasing municipal and local tax revenue, without an eye toward regional impacts. An additional challenge is that responsibility and authority for transportation, land use and air quality are spread across multiple entities and jurisdictions. Visioning processes can help local stakeholders understand the regional impacts of their individual development decisions and can serve as a starting place for coordination among local government officials. More formal coordination at the regional level is likely necessary for full implementation of smart growth plans. While few regions have the appetite for an actual regional government, as in Portland, Oregon, there are other options in between full regulatory control and no coordination. For example, since 1971, the Twin Cities region has had a fiscal-revenue sharing program such that growth outside of the city contributes back to the inner city development. Under Minnesota's Fiscal Disparity program, forty percent of the property tax revenue from new commercial and industrial growth within the seven counties and 187 jurisdictions around the Twin Cities goes into a pot - worth about $400 million a year - that is redistributed on the basis of per capita wealth. The program has slowed the race for new development - a race that too often means moving jobs from one community to another; promoted more orderly growth; and saved as much as $30 billion in infrastructure costs in the Twin Cities area.[72]

Funding for Efficient Transportation Alternatives

Transit is typically an essential component of regional smart growth plans. System expansion and improvement require significant funding. Transit funding can come from federal, state and local sources as the result of legislation (e.g., TEA-21), voter referenda, local initiatives, etc. Just with the recent election voters in several cities approved a sales tax increase to fund transit (and, in some cases, road) projects (Phoenix, Denver, Sacramento, San Diego). Perhaps the most important unknown is what Congress will do with TEA-21 re-authorization. Given multiple competing needs for government funds, a coordinated regional approach is needed to pool resources and build a convincing case for funding. It is important for state governments to assess the land use and air quality impacts of how they disburse transportation and infrastructure, as discussed below.

Targeting Infrastructure Funding

States invest billions of dollars of federal and state money on transportation and other key infrastructure (schools, sewers, utilities). A primary opportunity for reducing transportation emissions entails reorienting of transportation funding toward efficient alternatives (transit, bike, walk) and focusing infrastructure spending in efficient locations (core cities with existing

[71] S.Winkelman, G. Dierkers, A.Mackie & E.Silsbe. Center for Clean Air Policy. *State and Local Leadership on Transportation Climate Change*, January 2003 (updated April 2004).
[72] http://www.newrules.org/environment/taxbasesharing.html

infrastructure, transit-accessible, pedestrian-friendly, mixed-use locations). By applying this 'power of the purse' states can prioritize spending in efficient locations and limit or withhold funding from projects that do not meet smart growth and air quality goals. For this to happen however, it will require significant coordination between state and local governments including technical and legal assistance for localities that are faced with development pressure.

The State of Maryland was the first to move on this concept of limiting state infrastructure funding to "Priority Funding Areas" that local governments designate for growth, and withholds state funds for development outside of these areas -- including funding for transportation, water infrastructure, schools, etc. In 2002, New Jersey Governor James McGreevey issued Executive Order 4, which created the New Jersey Smart Growth Council which is responsible for and empowered to ensure that state transportation and infrastructure spending, regulation, incentives, school construction initiatives, or other funding issued to promote economic activity or otherwise by any agency are consistent with the principles of smart growth and the State Plan.

California and Massachusetts have institutional structures that can facilitate coordination of infrastructure, transportation and environmental concerns. The California Business, Transportation and Housing Agency, with a collective budget of $12.4 billion is in a remarkable position to promote efficient integration of transportation and infrastructure planning, and has a great interest in efficient land use development. The Massachusetts Office of Commonwealth Development (OCD) formed in 2003, includes the agencies responsible for environmental affairs, transportation and construction, housing and community development and energy resources.

CONCLUSIONS

In 2004 the EPA inspector general released a report highlighting the lack of progress by states on smog reductions. The report states that, "many of the most polluted metropolitan areas are still struggling to attain EPA's 1-hour ozone standard established over 25 years ago."[73] Given that the more stringent 8-hour standard is in effect, it is likely that some areas will encounter difficulty demonstrating and reaching attainment. The new standards, coupled with the growth in VMT that shows no signs of slowing as urban regions continue to expand into the countryside, means that air quality is going to become an even more pressing issue as more regions move into non-attainment. Mitigating the health and environmental impacts of air pollution will likely require new approaches to transportation and land use planning. Smart growth planning that integrates land uses, encourages building at densities sufficient for effective public transit, and that promotes non-motorized trips will help slow growth in VMT and make real improvements in the quality of our air.

We look forward to your participation at the Two for the Price of One forum. The recommendations we develop will help US EPA in its efforts to foster environmentally sustainable land development, and provide transportation guidance at the national level that can create incentives for states, regions and localities to develop and implement transportation and land use policies that reduce emissions and improve the quality of life for their citizens.

[73] EPA, Office of Inspector General, *op cit.*.