



# 2017 Federal Issues

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## First 365 Days

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The Texas Department of Transportation (TxDOT) appreciates the opportunity to provide input on transportation policy for consideration by the Trump Administration during the first 365 days in office. As a recognized leader among state departments of transportation, TxDOT looks forward to addressing our shared goal of improving the nation's infrastructure and fulfilling our mission of delivering a safe, reliable and integrated transportation system that enables the movement of people and goods.

Below are key items specific to Texas' needs and issues of nationwide importance. Summaries on these topics may be found in the appendices at the end of this document.

### **TxDOT Key Issues**

- Allow the use of the Fixing America's Surface Transportation (FAST) Act freight funding, for frontage road projects on the National Highway Freight Network
- Finalize approval to use Clearview Font on road signs
- Repurpose all unused earmarked funds for use on current "shovel-ready" projects

### **Surface Transportation Funding and Financing**

- Update apportionment formulas using current census data, lane mileage, and vehicle miles travelled
- Streamline the Transportation Infrastructure Finance and Innovation Act (TIFIA) credit assistance program process as directed by MAP-21

### **Additional State Autonomy**

- Expand NEPA assignment authority to include additional review items currently excluded from assignment agreements
- Develop guidance to implement Sec 1316 of the FAST Act to expand assumption of federal responsibilities by states through assignment to state departments of transportation (SDOTs) or Federal Highway Administration divisions
- Allow states to process their own design exemptions
- Expand assignment authority to cover additional resource agencies and their corresponding approval requirements

### **Federal Rulemaking**

- Establish phase-in periods of newly adopted rules

- Increase the role of State DOTs in federal rulemaking
- Amend 49 CFR 21.11 to require the U.S. Department of Transportation to make its preliminary finding regarding complaints under Title VI and related nondiscrimination statutes within 150 days of the complaint

### **Environmental Issues**

- Clarify air transportation conformity requirements; the requirements can cause lengthy delays to efforts to add new projects to metropolitan plans, regardless of negligible effects the projects may have on air quality conditions; consider suspending actions by the Environmental Protection Agency (EPA) to enforce new 2015 tightening of National Ambient Air Quality Standards (NAAQS)
- Establish an accelerated project delivery pilot program of infrastructure projects for which the permitting processes will be coordinated within the White House
- Work with Congress to strike requirements concerning the preparation of an environmental impact statement; the requirements in 23 USC 139(e) relate to intra-office development of decisions, and are not needed
- Work with Congress to establish a 90 day limit (rather than the current 150 day limit) in 23 USC 139(l) to file a petition for judicial review of a permit, license or approval for a highway or public transportation project
- Work with Congress to establish a 90 day limit on a federal resource agency (e.g. U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Fish and Wildlife Service) leaving vacant an employee position that is funded by an SDOT under 23 USC 139(j)

### **Modal Issues**

#### **Aviation**

- Withdraw the Federal Aviation Administration's recently issued Advisory Circular (AC) No. 150/5100-21 for the State Block Grant Program (SBGP).

#### **Maritime**

- Request funding in the President's FY 2018 budget request for the Maritime Administration's Port Infrastructure Development Program

## Appendix A

### TxDOT KEY ISSUES

- **Allow the use of FAST Act formula freight funding for frontage road projects on the National Highway Freight Network**

The Fixing America's Surface Transportation (FAST) Act created a new freight formula program, the National Highway Freight Program (NHFP), and mandates NHFP funding can only be used to fund projects on the highway freight network as initially designated by the U.S. Department of Transportation. The FAST Act is silent on using NHFP funds for frontage road projects.

When determining eligible projects for FY 2016 NHFP funding, TxDOT identified a number of projects, both on the Interstate main lines and frontage roads that appeared to meet NHFP eligibility requirements. TxDOT consulted with FHWA Texas staff, who said NHFP funds could be spent on frontage road projects as long as the frontage road is adjacent to a stretch of highway identified on the highway freight network. However, the Office of Freight Management at FHWA Headquarters later overturned this decision and determined that frontage road projects cannot use NHFP funds because they are not part of the highway freight network as designated by the FAST Act.

Frontage road projects adjacent to roads on the highway freight network should be eligible for NHFP funds since they serve as main lane alternative routes for oversized and overweight vehicles and during times when main lanes are unavailable.

- **Finalize approval for Clearview Font**

*See Federal Register Volume 81, Number 15, Pages 4083-4084*

On January 25, 2016, FHWA announced they were terminating the Interim Approval for the Use of Clearview Font on Positive Contrast Legends on Guide Signs. The announcement arrived without warning or discussion among current users of Clearview. TxDOT has been using Clearview for guide signs since 2003 and the font is currently used by at least 26 state departments of transportation (DOTs) and many other local agencies. FHWA has not yet provided justification to terminate usage of Clearview. TxDOT requests FHWA reconsider their termination of Clearview and asks that they develop a task force to conduct analysis of highway font research with a specific focus on Clearview. Further, final approval for Clearview Font would ultimately resolve the issue for SDOTs. With the majority of states utilizing Clearview Font, an expedited resolution of this issue is warranted.

- **Repurpose all unused earmarked funds for use on current “shovel-ready” projects**  
Congress has implemented a moratorium on earmarks since 2010. The FY 2016 and FY 2017 Omnibus Appropriations bills included an earmark flexibility provision that allowed states to repurpose old earmarks that are over ten years old with less than ten percent of funds obligated. This repurposing has been successful and could be implemented on a larger scale, especially for projects with advanced planning and engineering where construction can begin within a short time. TxDOT requests that states be allowed to repurpose all unused earmarked funds for such “shovel-ready” projects.

## **SURFACE TRANSPORTATION FUNDING AND FINANCING**

- **Update apportionment formulas using current census data, lane mileage and vehicle miles travelled**

Historically, Texas has received less funding from the federal Highway Trust Fund (HTF) than the state has contributed in gas tax receipts. That structural inequity has continued under the FAST Act. A major reason for this inequity is that the FAST Act did not update apportionment formulas.

Key apportionment formulas were tied to a state’s population in the 2000 census and the state’s lane mileage and vehicle miles travelled (VMT). In subsequent years, the formulas were not updated to reflect the 2010 census or newly added lane mileage or increased driving. Thus, the substantial growth Texas has experienced since 2000 was never factored into distributions to Texas. In addition to not adjusting the census data, mileage or VMT, the current formulas are tied to earmarks that were granted to states in The Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the 2005 authorization legislation. These one-time earmarks continue to be factored into how much money a state receives from the highway trust fund every year, preventing those states without major earmarks in 2005 from receiving an equitable share of HTF dollars. TxDOT requests that these apportionment formulas be updated using current census data, lane mileage and vehicle miles travelled in order to accurately represent current HTF participation.

- **Streamline the TIFIA process as directed by MAP-21**

TxDOT requests stricter adherence to the streamlined Transportation Infrastructure Finance and Innovation Act (TIFIA) process that was shaped in The Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21). Letters of interest should be processed in a more expedited manner. Most projects contain multiple sources of funding and delays in funding sources can cause serious issues for the project.

## ADDITIONAL STATE AUTONOMY

- **Expand NEPA assignment authority to include additional review items currently excluded from assignment agreements**

Under federal law, states may assume responsibilities of the U.S. Department of Transportation under NEPA and related federal laws for surface transportation projects. However, certain approvals such as air quality, floodplain protections and noise impact determinations were retained by FHWA. Expansion of the authorities that may be assigned to the states are needed to fully achieve the project delivery streamlining benefits through NEPA assignment. TxDOT requests that USDOT work with Congress to clarify and expand NEPA assignment authorities.

- **Develop guidance to implement Sec 1316 of the FAST Act to expand assumption of federal responsibilities by states through assignment to state Departments of Transportation or Federal Highway Administration divisions**

Sec 1316 of the FAST Act directed the Secretary to use the authority under section 106(c) of title 23, United states Code, to the maximum extent practicable, to allow a State to assume the responsibilities of the Secretary for project design, plans, specifications, estimates, contract awards, and inspection of projects, on both a project-specific and programmatic basis. This section has not been implemented and the Secretary has not developed guidance or proposed rulemaking language. TxDOT suggests Sec 1316 could be utilized to expedite project delivery and eliminate layers of bureaucracy, similar to the successful implementation of NEPA assignment.

- **Allow states to process their own design exemptions**

When a project is designed to specifications that fall outside FHWA's agreed upon design standards, TxDOT must gain a design exemption from FHWA before proceeding. These specifications typically exceed the minimum requirements and yet still require special approvals. Allowing TxDOT to self-certify any design specifications that exceed design standards as safe and structurally sound would reduce the time required for design approvals.

- **Expand assignment authority to cover additional resource agencies and their corresponding approval requirements**

Congress should expand the NEPA assignment program to include approvals issued by EPA, US Army Corps of Engineers, and US Fish and Wildlife Service. The requirement to obtain these additional approvals, despite TxDOT's NEPA delegation, results in unnecessary delay of the environmental clearance process.

## RULEMAKING

- **Establish a phase-in period of newly adopted rules**

Agencies often issue final rules that become effective on the same day of issuance. This immediate effective date does not allow FHWA the time to develop corresponding guidance, which negatively impacts state DOTs. If a deadline is not statutorily required, TxDOT requests that agencies allow a phase-in period before a final rule becomes effective, to allow for development of guidance for the rule.

- **Increase the role of State DOTs in federal rulemaking**

As state DOTs assume more responsibilities previously held by the federal government, the proper role of state officials when developing federal rulemakings should be strengthened. The recent assumption of National Environmental Policy Act (NEPA) responsibilities is a relevant example.

As FHWA developed rules for changes in environmental streamlining policies in MAP-21 and the FAST Act, states with NEPA assignment were not consulted beyond their submission of comments to the Federal Register. State DOTs should be consulted prior to drafting regulations and prior to the formal public comment period. This would strengthen federal and state relations. The Environmental Protection Agency (EPA) already consults with states on some rulemakings. FHWA should similarly consult with states. California, Texas, Ohio and Florida have full NEPA assignment and Utah's assignment is pending, with many more states considering whether to seek this authority. TxDOT requests that state DOTs be afforded a more active role in federal rulemaking, especially those related to delegated programs.

- **Amend 49 C.F.R. § 21.11 to require the U.S. Department of Transportation to make its preliminary finding regarding complaints under Title VI and related nondiscrimination statutes within 150 days of the complaint**

Transportation infrastructure projects are complex. Even small delays can have a significant impact, affecting timelines and wasting taxpayer money and agency resources. Projects must comply with all civil rights protections; however, much-needed infrastructure projects should not be derailed by delayed handling of complaints. To balance these interests, a deadline should be imposed on the DOT to make the preliminary compliance determination required by 49 C.F.R. § 21.11 for complaints under Title VI and related nondiscrimination statutes. This would not impact a resident's ability to file a complaint, but would provide for resolution of complaints so that agencies may proceed with projects in a timely and efficient manner. We suggest that 49 C.F.R. § 21.11 be amended to require the DOT to make its preliminary finding within 150 days of the date the complaint is filed.

## **ENVIRONMENTAL ISSUES**

- **Clarify transportation conformity requirements**

The transportation conformity rule applies to any approval, funding or implementation of an FHWA/FTA project. The Clean Air Act (CAA) (42 USC 7506(c)(1)(B)) states that federal projects shall not cause or contribute to a new violation of any National Ambient Air Quality Standard (NAAQS or standard), increase the frequency or severity of an existing violation of any standard, or delay timely attainment of any standard or any required interim emission reductions or milestones in any area. Prior to an FHWA/FTA authorization for construction decision, it is not possible for a transportation project decision to result in air quality emissions. Aligning the project-level conformity requirement under the EPA rules implementing the CAA conformity requirement (40 C.F.R. §93.104(d)) to the construction decision will allow time for the long-range transportation plan (plan) to be amended in those instances where the project changes during NEPA. This will prevent the NEPA process from delaying necessary infrastructure while plans are updated. This is critical to resolve the catch-22 loop dilemma with advanced funding projects (AFPs) especially if additional infrastructure investment becomes reality. AFPs require NEPA clearance prior to the funding agreement, but the lack of a funding agreement prevents the transportation plans from including the funds due to fiscal constraint requirements.

The FHWA should work with EPA to clarify that “project approval” or “project implementation” for transportation conformity is tied to the authority to construct phase rather than NEPA or any other project development decision prior to construction. Further, it would be beneficial for EPA to clarify that project level transportation conformity can be demonstrated post-NEPA and prior to construction. This change is consistent with expediting project development and 42 USC 7506 provisions as well as FHWA NEPA regulations under 23 CFR 771.113 “Timing of Administration Activities” which allows NEPA clearance prior to final programming in a transportation plan. Allowing the conformity determination to occur beyond the NEPA phase of project development would align the transportation conformity process with the FHWA regulatory requirements for project development and transportation planning and increase efficiency in project development.

Please see Appendix B for additional recommendations on improving transportation conformity.

- **Establish an accelerated project delivery pilot program of infrastructure projects for which the permitting processes will be coordinated from within the White House Economic**

TxDOT requests the formation of this pilot program, which would select infrastructure projects for participation in an accelerated project delivery program to be led by officials within the White House. The key objective of this program would be to streamline permitting processes.

- **Work with Congress to strike requirements concerning the preparation of an environmental impact statement; the requirements in 23 USC 139(e) relate to intra-office development of issues, and are not needed**

To begin the process of preparing an environmental impact statement, a “Notice of Intent” is published in the Federal Register. 23 CFR 771.123(a). However, the provisions of 23 USC 139(e) added procedural requirements about the development of issues prior to publication of the NOI. The provisions are not needed because the publication of a compliant NOI will make it evident that the early development of issues has occurred.

- **Work with Congress to establish a 90 day limit (rather than the current 150 day limit) in 23 USC 139(l) to file a petition for judicial review of a permit, license or approval for a highway or public transportation project**

28 USC 2401 imposes a six-year statute of limitations for claims arising from, among other things, the approval of federal permits, licenses, or approvals issued by a federal agency. In 2005, Congress reduced the limitations period for approvals related to highway projects and transit projects through passage of SAFETEA-LU Section 139(l), which imposed a 180-day limitations deadline when the federal agency published the required notice in the Federal Register. In 2012, MAP-21 further reduced the limitations period to 150 days. The further reduction of the period should not harm the interests of any person. The issues connected with a transportation project are well known for years during the development of the project. Giving complainants 90 days after final approval to file suit is a reasonable period. It is only with the expiration of this period that a project can proceed to construction with the certainty that there is no litigation risk.

- **Work with Congress to establish a 90 day limit on a federal resource agency (e.g. U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Fish and Wildlife Service) leaving vacant an employee position that is funded by an SDOT under 23 USC 139(j)**

In 2005, Congress enacted SAFETEA-LU Section 139(j) allowing states to fund positions in federal agencies to provide additional resources and expedite reviews of regulatory approvals. TxDOT currently funds positions in several federal agencies pursuant to Section 139(j). However, in one instance a federal agency has not filled a position once vacated, leaving the funded position vacant for a long period, with the results in delays to TxDOT projects. TxDOT believes that a funded position should be vacant for no more than 90 days.

## **MODAL ISSUES**

### **AVIATION**

- **Withdraw the Federal Aviation Administration’s recently issued Advisory Circular (AC) No. 150/5100-21 for the State Block Grant Program (SBGP)**

TxDOT requests withdrawal of this Advisory Circular, which standardizes aspects of the SBGP across all 10 block grant states. When Congress created the SBGP, the intent was to provide states with flexibility to administer the SBGP as best suited their state. The SBGP is not a one-size-fits-all program; state aviation divisions have varying program sizes, staff, and abilities. States need flexibility in order to best utilize funds, personnel, and time. The requirements of this AC will also slow down the grant process, as it imposes additional requirements on the transfer of entitlement funds.

## MARITIME

- **Request funding in the President's FY2018 budget request for the Maritime Administration's Port Infrastructure Development Program, and for authorized and ongoing US Army Corps of Engineers navigation construction projects and feasibility studies in Texas.**

The Port Infrastructure Development Program was authorized in the National Defense Authorization Act for FY 2010, Pub. L. No. 111-84 (Oct. 28, 2009) and created for the improvement of port facilities. However, it has never been funded. Ports have limited opportunities to apply for or receive federal funds for the infrastructure needs inside their perimeters. TxDOT requests that this program be funded in order to help alleviate this problem.

The US Army Corps of Engineers has several ongoing feasibility studies and construction projects that will improve the navigability of Texas ports and waterways. TxDOT requests that these studies and projects be funded to the maximum extent possible, which will continue to ensure Texas' competitiveness in waterborne trade.

## Appendix B

### TXDOT RECOMMENDATIONS ON POTENTIAL LEGISLATIVE AND REGULATORY CHANGES TO IMPROVE SURFACE TRANSPORTATION PROGRAM INVESTMENT AND PROJECT DELIVERY IN NONATTAINMENT AREAS

TxDOT Recommendations on Improving Transportation Conformity	
<p>Shift NAAQS review from 5-year cycles to 10-year cycles.</p>	<p>The Clean Air Act requires the EPA to set National Ambient Air Quality Standards (NAAQS) for six criteria air pollutants considered harmful to public health and the environment and review those standards every five years to determine if the current level is sufficient to protect public health. Even though the EPA is statutorily mandated to review the NAAQS on five-year cycles, the EPA routinely fails to meet these deadlines and in actuality ends up performing reviews in ten-year cycles. <b>Amend 42 USC 7409(d) to create a ten year cycle of review for all criteria air pollutants; see also HR 806/S 263 (115<sup>th</sup> Congress).</b></p>
<p>Exempt marginal nonattainment areas from transportation conformity requirements.</p>	<p>Marginal nonattainment areas are areas slightly above the air standard. The Clean Air Act does not require State Implementation Plans (SIPs) to demonstrate how marginal nonattainment areas will achieve the standard because these areas are expected to comply simply through implementation of existing federal tailpipe controls and state nonattainment permitting. However, marginal nonattainment areas are required to demonstrate transportation conformity. <b>Amend 23 USC 7506(c)(1) or (2) to exempt marginal nonattainment from transportation conformity requirements. If needed, clarify that this exemption prevents general conformity from applying to transportation projects in these areas.</b></p>
<p>Use programmatic agreements at both nationwide and state/regional levels to meet conformity requirements.</p>	<p>Provide programmatic agreement options at a nation-wide, state and regional level as appropriate to dramatically streamline regional conformity for transportation plan and program changes. Transportation conformity creates uncertainty in both transportation planning and the environmental clearance process that result in project delays. Programmatic agreements can dramatically reduce time and cost, especially for states and regions that have a track record of being able to show conformity (historically, most of the areas subject to conformity in the U.S.). Transportation conformity processes add six to nine or more</p>

	<p>months to process transportation plan and program changes. A programmatic approach can streamline routine conformity processes that involve very small changes in regional total traffic and emissions. It would be especially helpful for regions that have a substantial margin between modeled emissions reported in regional conformity analyses and the motor vehicle emission budgets (MVEBs). In these cases, the conformity analyses are effectively a foregone conclusion in terms of being able to show the MVEBs will always be met (given the relatively wide margin) and notwithstanding any realistic change in the transportation plan or program.</p> <p>For example, a national programmatic agreement could deem federal tailpipe and fuel controls under Title II of the CAA as sufficient for meeting transportation conformity for areas that do not have transportation control measure requirements in the SIP. <b>Amend 42 USC 7506(c)(2) and 40 CFR Part 51 &amp; 93 to provide for the use of programmatic agreements at a nation-wide level (implemented by FHWA/FTA) and state or regional level (executed between state DOT or MPO with FHWA/FTA) to meet conformity requirements.</b></p>
<p><b>Reduce attainment-maintenance period from two ten-year periods (20 years total) to two three- to five-year periods (6-10 years total).</b></p>	<p>Once a nonattainment area has reached attainment for a particular NAAQS, they must then demonstrate attainment for an additional 20 years and are subject to conformity requirements throughout that time. <b>Amend 42 USC 7505(a) to reduce the first maintenance plan from 10 years to 3 to 5 years. Amend 42 USC 7505(b) to reduce the second maintenance plan from 10 years to 3 to 5 years and revise the interval for submitting the second maintenance plan from 8 years to a time period consistent with the 3 to 5 year maintenance plan interval.</b> This will reduce the amount of time an area is subject to transportation conformity after it attains the NAAQS from 20 years to 6 – 10 years, while providing a reasonable time period to demonstrate an area will not relapse to nonattainment for the NAAQS the area is now attaining.</p>
<p><b>Apply conformity requirements only post-NEPA and prior to project construction.</b></p>	<p>Currently conformity must be demonstrated at all five phases of project development (NEPA/environmental decision; design; plans, specifications and estimates (PS&amp;E); right-of-way acquisition and utility adjustments; and construction). Allowing DOTs and MPOs to demonstrate conformity once, post-NEPA and pre-construction, allows for plans to be updated with late development project changes without resulting in project delays.</p>

	<p>NEPA would be conditioned on obtaining the subsequent transportation conformity determination (similar to water and USACE permits).</p> <p>In an effort to add flexibility to project-level conformity determinations, the 1997 conformity rule had a “grandfathering” provision that locked in conformity at the NEPA approval point regardless of what happened later. However, that was overturned by court action, so project-level conformity must be demonstrated for each of the five federal decision points in project development. This increases the number of opportunities that a project-level conformity determination may trigger the need for a new regional conformity determination and the resulting delays. Providing an option for conformity to only apply to the post-NEPA stage prior to construction would allow for changes made in the NEPA process (including those made because of public involvement) to be incorporated into an updated metropolitan transportation plan (plan) prior to construction without causing project delays (similar to permits issued post-NEPA).</p> <p>This option is critical for the advancement of innovative financing projects in nonattainment areas.</p> <p><b>Amend 42 USC 7501 to add a new definition: (5) transportation project approval for project level transportation conformity is approval for construction. Any project development approval prior to construction may be made contingent upon project level conformity being determined for construction. The approval for construction may be made post the environmental review phase of project development.</b></p> <p>Note: No air emissions occur for transportation project development decisions made prior to construction so this change does not result in any adverse impact to air quality. These amendments would clarify that project level conformity determination is only required at the end of project development and prior to construction.</p> <p><b>Amend 42 USC 7506(c)(3)(B) to clarify that project “approval” is tied to construction :</b></p> <p>“(B) the transportation projects—</p> <ul style="list-style-type: none"><li>(i) come from a conforming transportation plan and program as defined in subparagraph (A) or for 12 months after November 15, 1990, from a transportation program found to conform within 3 years prior to November 15, 1990; and</li></ul>
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	<p>(ii) in carbon monoxide nonattainment areas, eliminate or reduce the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.</p> <p><b>(iii) project approval is tied to approval for construction. Project approvals prior to construction may be made contingent upon project level conformity being determined for construction.</b></p> <p>With regard to subparagraph (B)(ii), such determination may be made as part of either the conformity determination for the transportation program or for the individual project taken as a whole during the environmental review phase of project development.”</p>
<p><b>Require transportation conformity for only the most recently issued NAAQS.</b></p>	<p>Currently, there are three standards for particulate matter— 1997, 2006 and 2012— and three standards for ozone—1997 and 2008 and 2015 (2015 implementing regulations are currently being developed). Each successive standard imposes stricter air quality standards. MPOs that are in nonattainment must document how they plan to achieve cleaner air for <i>all</i> applicable existing standards. <b>Require that when a new standard is established, MPOs only need to conform to the most recent standard. This would require an amendment to 42 USC 7506.</b></p>
<p><b>Study the role and effectiveness of transportation conformity in meeting air quality standards.</b></p>	<p>Transportation conformity requirements prohibit any federally supported transportation agency from carrying out, approving, or otherwise supporting any action that does not "conform" to the applicable State plan for achieving or maintaining air quality standards. Transportation conformity requirements are complex and the conformity process is lengthy. The air has become cleaner in recent years, but much of the improvement has resulted from increasingly effective EPA regulations requiring a transition to clean vehicle engines and fuels. As the resources needed to comply with the conformity requirements are substantial, better options to focus limited resources should be explored. <b>Require FHWA, FTA and EPA to commission an independent National Academies of Sciences study on transportation air quality conformity to evaluate the effectiveness of conformity requirements related to meeting the goals of the Clean Air Act, and provide recommendations for transportation conformity policy, legislative and regulatory changes related to transportation planning and air quality.</b></p>
<p><b>Require initial conformity application after the establishment of the motor vehicle</b></p>	<p>After a new NAAQS is established, nonattainment areas are designated. One year after this designation, transportation conformity applies. State Implementation Plans (SIPs) however, are not due for three years after nonattainment areas are</p>

emissions budget.	<p>designated. The SIPs establish the pollutant budgets and determine the percentages attributable to various contributors (including transportation). Due to the timing requirement related to transportation conformity, conformity must occur two years before the SIP is developed and budgets and contributors are established. To conduct transportation conformity, MPOs must conduct complicated analysis and build vs. no build scenario evaluations to predict future emissions. MPOs must also speculate on whether EPA will designate their area attainment or nonattainment. As such, a great deal of time and money could be spent on analysis conducted on areas ultimately not designated as nonattainment areas. If transportation conformity were not required until after a SIP is developed, MPOs could use the actual SIP budgets rather than expending project funds by conducting complicated and sometimes unnecessary analyses.</p> <p><b>Require that initial transportation conformity does not apply until six months after EPA approves the SIP motor vehicle emissions budgets. This would require an amendment to 42 USC 7506.</b></p>
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<b>Potential Administrative Action</b>	
<p><b>Suspend PM modeling and use qualitative analysis until EPA can develop an accurate model.</b></p>	<p>EPA’s recently introduced model (AERMOD) for particulate matter (PM) project-level (“hot-spot”) analyses is not sufficiently accurate for typical transportation projects and causes projects to fail to meet EPA transportation conformity requirements. EPA regulation indicates that when quantitative analysis methods are not available, qualitative (no modeling) analyses must be conducted. <b>EPA requirements to do PM modeling should be suspended until EPA develops a model with the requisite accuracy and precision for PM analyses, and develops and implements an ongoing dispersion model improvement process that involves substantive stakeholder consultation. In the interim, States will conduct qualitative analysis to make conformity determinations. This would require an amendment to 40 CFR 51 Appendix W.</b></p>
<p><b>Eliminate certain modeling requirements for intersection projects that will improve level of service.</b></p>	<p>Projects that will cause an intersection to improve level of service or reduce delay times should not require modeling. <b>This would require a regulatory change to 40 CFR 93.123.</b></p>