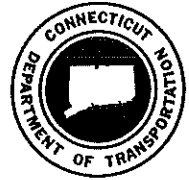




STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION
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Office of the
Commissioner

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October 3, 2014

U.S. Department of Transportation
Docket Management Facility
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Docket Clerk:

Re: Docket No. FHWA-2013-0018

The Connecticut Department of Transportation (Department) is pleased to provide the enclosed comments on the Federal Highway Administration's (FHWA) Notice of Proposed Rulemaking (NPRM) regarding "weighting factors" to be used in PM2.5 funding calculations for the "Congestion Mitigation and Air Quality (CMAQ) Program" that were published in the Federal Register on August 4, 2014.

The Department looks forward to working with FHWA in the implementation of the final rules.

If you would like to discuss the issues raised in this submittal, please contact Mr. Thomas Maziarz, Bureau Chief, Bureau of Policy and Planning at (860) 594-2002.

Sincerely,

A handwritten signature in black ink, appearing to read "James Redeker".

James Redeker
Commissioner

Enclosure

Connecticut Department of Transportation

**Comments to U.S. DOT on Proposed Rule for CMAQ Weighting Factors
Docket No. FHWA-2013-0018**

Submitted October 3, 2014

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Background

Over the last 15 years PM2.5 pollutant levels in Connecticut have greatly declined. Much of this decline is attributed to the various successful federal and state emission control programs implemented in Connecticut and in neighboring states. This past year the United States Environmental Protection Agency (EPA) approved a maintenance plan to redesignate Connecticut's former nonattainment areas for PM2.5 to attainment/maintenance, consisting of two ten-year periods.

General Comment

In order to affectively continue to help leverage efforts to maintain clean air in Connecticut and in neighboring states, the Connecticut Department of Transportation (Department) strongly advocates the United States Department of Transportation (U.S. DOT) for the greatest flexibility possible in programing and obligating all Congestion Mitigation and Air Quality (CMAQ) program funds, especially the new CMAQ set asides outlined in the Federal Highway Administration (FHWA) Notice of Proposed Rulemaking (NPRM) for projects that reduce PM2.5 emissions. In addition to the Department's comments, the Department also supports a majority of the CMAQ NPRM comments developed by the American Association of State Highway and Transportation Officials (AASHTO) as they also advocate for the greater flexibility in the implementation of new CMAQ set asides for projects that reduce PM2.5 emissions. Below are the Department's comments addressing each section of the CMAQ NPRM as well as the areas that FHWA specifically requested comments on.

Section by Section Comments

Section 790.101 – Purpose

The Department supports the purpose of the proposed rule outlined in Section 790.101, which is to establish weighting factors to be used in the calculation of new CMAQ set-asides for projects that reduce PM2.5 emissions. Since MAP-21 did not provide any statutory direction in U.S.C. 149(k)(1), as to how these weighting factors would be used in determining the amount of the PM2.5 set-aside, the Department, thus supports the decision made by U.S. DOT to establish these new weighting factors through the rulemaking process, allowing for state, local and other stakeholder input.

Section 790.103 – Applicability

The Department acknowledges that the proposed rule, outlined in Section 790.103, applies to all States that have a PM2.5 nonattainment and or maintenance area. The Department also acknowledges that any PM2.5 set-aside funds, as outlined in both U.S.C. 149(k)(1) and Section 790.101 of the proposed rule can only be obligated for projects that reduce PM2.5 emissions in those areas. On one hand, the Department is pleased to see that the language in the proposed rule is consistent with U.S.C. 149(k)(1), however, on the other hand the Department is also concerned about the long-term inflexibility of these CMAQ set aside funds, especially in maintenance areas.

Obligating CMAQ funds for states can often be a challenging task given the multitude of requirements and limitations for delivering CMAQ projects. The new MAP-21 requirement for states to set aside a portion of its CMAQ funds for projects that reduce PM2.5 emissions in nonattainment and maintenance areas is an example of this. In most states, PM2.5 nonattainment and or maintenance areas do not cover the entire state but rather only a smaller geographic area within the state. Therefore, the ability for states to leverage CMAQ funds in any area of the state is restricted.

As PM2.5 levels diminish below certain thresholds in nonattainment areas, states can make a request to EPA to approve a maintenance plan and redesignate these areas to attainment / maintenance, aka maintenance for two ten-year periods. However, since MAP-21 requires set-asides for projects that reduce PM2.5 emissions in maintenance areas, states may be challenged to find enough eligible projects to sustain the obligation of these set-asides throughout the entire 20 year maintenance period.

790.105 – Definitions

The Department has no comments at this time regarding the definitions in this section.

790.107 – Weighting Factors for Determining Weighted Population

- Weighting Factor for PM2.5 Nonattainment Areas:

In development of final rules, the Department strongly encourages U.S. DOT to establish a weighting factor of *up to but no greater than* the existing interim weighting factor of 1.2 for PM2.5 nonattainment areas. The Department opposes any weighting factor greater than 1.2 for nonattainment areas. That being said, the Department strongly opposes the proposed U.S. DOT weighting factor of 5.0 for nonattainment areas.

- Weighting Factor for PM2.5 Maintenance Areas:

In development of final rules, the Department strongly encourages U.S. DOT to establish a weighting factor of up to but no greater than the proposed U.S. DOT weighting factor of 1.0 for PM2.5 maintenance areas. The Department opposes any weighting factor greater than 1.0 for maintenance areas.

- Weightings in Areas Designated as Nonattainment for Multiple Pollutants:

The Department agrees with AASHTO that in the development of final rules, U.S. DOT should also include specific weightings to be used for each possible combination of nonattainment and/or maintenance area for Ozone, CO and PM2.5 pollutants. The Department agrees with AASHTO that the following combinations which are not addressed in the proposed rule, should be added to the final rule:

- Ozone nonattainment and maintenance areas that are also designated as PM2.5 maintenance areas
- Ozone nonattainment and maintenance areas that are also designated as CO nonattainment or maintenance areas and are designated as PM2.5 nonattainment areas
- Ozone nonattainment and maintenance areas that are also designated as CO nonattainment or maintenance areas and are designated as PM2.5 maintenance areas

The Department agrees with AASHTO that these combinations should be specifically addressed in the final rule even if the weighting for one or more of the individual pollutants is 1.0. The benefit of specifying the weighting factor for each possible combination is that it ensures clarity and certainty in implementation of the rule.

FHWA Requests for Comment on CMAQ Weighting Factor Proposed Rule

The FHWA is requesting comments on a proposed weighting factor of 5.0, to be used in determining the weighted population of a PM2.5 nonattainment area:

Like AASHTO, the Department strongly opposes the proposed U.S. DOT weighting factor of 5.0 to be used in determining the weighted population of a PM2.5 nonattainment area.

The Department agrees with AASHTO that the reasons cited in the background section of the proposed rules are not persuasive as to why a weighting factor of 5.0 was proposed by U.S. DOT. The Department agrees with AASHTO that there is no basis in the legislation for a PM2.5 weighting factor twice as great as the other two pollutants (Ozone and CO2) combined. Furthermore, the proposed rules do not identify any scientific basis for assigning such a weighting. The decision to adopt a weighting factor of 5.0 may have been well-intentioned, but nonetheless arbitrary. That being said, the Department believes there is a far stronger basis for simply establishing a weighting factor of up to but no greater than the existing interim weighting factor of 1.2 for PM2.5 nonattainment areas.

The FHWA seeks comment on administrative or other costs that may be incurred as a result of the proposed weighting factor.

The Department has no comment regarding administrative or other costs at this time.

The FHWA requests comments on whether setting the weighting factor at 5.0 may present any implementation concerns for States or local transportation agencies, and if so, how FHWA could address those concerns.

Connecticut does not currently have any areas within the state that are nonattainment for PM2.5 pollutants. However, the Department does support AASHTO's recommendation stated below.

U.S. DOT should provide:

"Increased flexibility in the application of PM2.5 set-aside requirements for PM2.5 nonattainment and maintenance areas in which transportation sources are insignificant contributors to PM2.5 nonattainment or maintenance status under State Implementation Plans (SIPS) or otherwise addressed. Increased flexibility should be provided to areas that are in nonattainment and maintenance areas by making the weighting for PM2.5

zero (0) if transportation sources are determined to be an insignificant contributor to the PM2.5 nonattainment or maintenance status. Under this approach, States would not lose flexibility in programming CMAQ funds when it has been determined that transportation is not the cause of the nonattainment or maintenance status. Similarly, in instances where transportation is a greater contributor to PM2.5 nonattainment or maintenance status than “insignificant”, and there is another contributor to the nonattainment or maintenance status than “insignificant”, the rule should have FHWA reduce the weighting, by an amount it determines, greater than zero but less than 1.2 for nonattainment areas and greater than zero but less than 1.0 for maintenance areas, to reflect the more limited contribution of transportation to the nonattainment or maintenance status.”

The Department supports AASHTO's Example Scenario table shown below.

Table 1. Example Scenarios

Scenario	Transportation Sources	Non-Transportation Sources (e.g., Power Plant Sources)	PM2.5 Nonattainment Weighting Factor	PM2.5 Maintenance Weighting Factor
Scenario 1	Significant	Insignificant	1.2	1.0
Scenario 2	Significant	Significant	Between 0 and 1.2	Between 0 and 1.012
Scenario 3	Insignificant	Significant	0	0

The Department also supports AASHTO's Proposed Weighting Factors (table shown below) for 23 CFR 790.107 where transportation sources for PM2.5 are significant and non-transportation sources for PM2.5 are insignificant.

AASHTO's Proposed Weighting Factors for 23 CFR 790.107

Section 790.107	Classification	Proposed Rule	AASHTO Proposal for Weighting Factors for Determining Weighted Population
(a)	Ozone nonattainment or maintenance	Ozone factor	Same as proposed rule
(b)	CO nonattainment or maintenance	1.0	Same as proposed rule

(c)	Ozone nonattainment or maintenance and CO nonattainment or maintenance	Ozone factor x 1.2	Same as proposed rule
(d)	PM2.5 nonattainment	5.0	1.2 <i>Maintains existing weighting as stated in FHWA guidance. See comment letter.</i>
(d)	PM2.5 maintenance	1.0	Same as proposed rule
(e)	Ozone nonattainment or maintenance and PM2.5 nonattainment	Ozone factor x 5.0	(Ozone factor) x 1.2 <i>Recommended for consistency with change to paragraph (d).</i>
(f) [new]	Ozone nonattainment or maintenance and PM2.5 maintenance	Not addressed	(Ozone factor) x 1.0 <i>Ozone weighting is the same as in paragraph (e); PM2.5 weighting is 1.0 for consistency with paragraph (d).</i>
(g) [new]	CO nonattainment or maintenance and PM2.5 nonattainment or maintenance	Not addressed	(PM2.5 factor) x 1.0 <i>PM2.5 weightings are the same as in paragraph (d); CO weighting is 1.0 for consistency with paragraph (b)</i>
(h) [new]	Ozone nonattainment or maintenance and CO nonattainment or maintenance and PM2.5 nonattainment	Not addressed	(Ozone factor) x 1.2 x 1.2 <i>Ozone and CO weightings are the same as in paragraph (c); PM2.5 weighting is 1.2 for consistency with paragraph (d) (for nonattainment areas).</i>