

**Testimony of**  
(written)

**Paul D. Degges, P.E.**

**Chief Engineer**  
**Tennessee Department of Transportation**

**Regarding**

***State and Local Perspectives on Transportation***

**Before the**

**Committee on Environment and Public Works**  
**United States Senate**

**April 6, 2011**

Chairman Boxer and Members of the Committee, thank you for the opportunity to testify in regard to State and Local perspectives on Transportation priorities for the next surface Transportation Authorization. My name is Paul Degges and I am the Chief Engineer of the Tennessee Department of Transportation (TDOT) and am a registered professional engineer.

Tennessee ranks 17<sup>th</sup> in population in the most recent census with about half the people living in rural areas and half in a metropolitan setting. TDOT is a multi-modal Transportation agency with an annual budget of approximately \$1.8 billion and a workforce of just over 4,200 employees. About half our funding consist of federal aid paid by Tennessean's into the Highway Trust Fund.

The department takes pride in our management of the transportation assets in Tennessee and base our management on customer input with data driven performance goals.

### **I. Need for a Long-Term Transportation Authorization Bill**

TDOT strongly supports a six-year authorization of the federal transportation program. A multi-year authorization of the federal transportation program will enable Tennessee to pursue long-term planning and programming strategies. Without a multi-year bill, TDOT, along with Tennessee's 11 Metropolitan Planning Organizations (MPOs), and 12 Rural Planning Organizations (RPOs) cannot effectively develop long term transportation strategies for the state.

### **II. Program Consolidation**

TDOT strongly supports the concept of consolidating some 55 funding silos into 5 or fewer core programs. However, we believe the overall funding should be made available to the states in a fashion similar to previous authorizations which distribute funds proportional to a state's population and transportation network. Tennessee understands the need in some cases for special federal-aid programs to address regionally unique circumstances; however we do not believe the new bill should create federal set-aside programs, essentially creating administration earmarks.

The bill needs to reinforce and expand the concept of a federally assisted state administered program as it currently exists in Title 23 Chapter 1 Section 145 of United States Code.

### **III. Donor State Issue**

Tennessee has been a donor state for many years with fuel taxes paid by Tennessean's leaving the state for projects in other jurisdictions. We understand that there may be a need for donor state situations; however, donee states should be required to meet a maintenance of effort threshold or minimum state commitment of funding before donor states subsidize donee state programs.

#### **IV. Maximize Flexibility**

Transportation needs vary from state to state and this program consolidation needs to maximize the flexibility of a state to tailor these funds to projects and programs that meet the needs of individual states.

This flexibility in the use of federal aid funds holds true for all fund sources in the authorization. Not only the infrastructure and operations programs of FHWA and FTA, but also the behavioral side through NHSTA. Tennessee supports consolidation of funding in these programs as well, which would allow a more comprehensive approach to safety.

#### **V. Maintenance Issues and Eligibility**

As the buying power of transportation dollars decreases coupled with the increasing need to maintain our aging infrastructure, there is a need to allow more flexibility in the use of Federal funds to perform maintenance activities. Current flexibility in the federal aid program does allow for preservation or preventive maintenance and is defined by FHWA as extending the service life of the transportation facility. All other activities are considered to be routine maintenance and currently remain a State funded responsibility. Routine maintenance is defined by FHWA as “maintenance work that is planned and performed on a routine basis to maintain and preserve the condition of the highway system or to respond to specific conditions and events that restore the highway system to an adequate level of service”. As new requirements such as sign sheeting and pavement marking retro-reflectivity standards are enacted and the maintenance of roadside appurtenances such as cable barrier guardrail become more commonplace, additional State funds are necessary to maintain and preserves these investments. Tennessee estimates the investment in our highway system alone to be about \$15.5 billion. It only makes sense that the maintenance of this investment be eligible for federal aid.

We believe that additional flexibility is needed in the new authorization regarding Bridge Inspections. This year FHWA, at the OIG’s recommendation, has implemented a series of metrics for each state’s bridge inspection program review that gives little to no latitude in the inspection cycle. The logical way a Department would address this stiff requirement is to place the bridge on a 23 month cycle for inspection to avoid being penalized. The downside to this logic is with every cycle of inspection, the Department loses a month, thereby reporting the bridge condition more frequently. The recommended approach is to modify 23 CFR 650.311 (a) (Routine Inspection) to say “inspect each bridge at regular intervals not to exceed twenty five months and not less than twenty three months from the established base month” or more simply put all bridges shall be inspected at regular intervals of an average of 24 months and not to exceed 25 months.

## **VI. Streamline Project Delivery**

One of the biggest frustrations Tennessean's have with transportation projects is the time it takes to plan, design, & construct them, which in Tennessee averages 12 years. The department applauds FHWA Administrator Victor Mendez's, Every Day Counts initiative which is envisioned to shorten project delivery time and speed the deployment of new and proven technologies into the marketplace. But under the current rules and regulations, reducing this 12 year timeframe by a significant amount is unlikely.

### **Fiscal Constraint in the Statewide Transportation Improvement Program (STIP)**

Over several years, maintaining the STIP has become a cumbersome process due to the numerous actions required to stay compliant with the interpretation of federal regulations. The STIP process has slowly degraded into a checkbook, when in actuality it is supposed to be a planning document. This trend should be reversed by only requiring the STIP to be fiscally constrained by fiscal year, instead of by fiscal year by fund code, which is the current requirement. The STIP should have greater flexibility to group projects by "Type of Work", especially when projects are environmentally neutral and not regionally significant. The grouping of projects could be enhanced even more by allowing a "Statewide" grouping category, and eliminating the need for each grouping entry to also be included in an MPO Transportation Improvement Program (TIP).

### **Increasing Flexibility in the STIP Amendment Process**

Currently illustrative projects are allowed to be listed in the STIP, but if a decision is made to move an illustrative project into a fiscal year, that project must go through the amendment process, which is time consuming and restricts the flexibility of maximizing available funds, especially at the end of a federal fiscal year. If illustrative projects are processed through an approved public involvement plan, they should be allowed to be used by the states to substitute for other projects that have encountered development issues, without any further administrative action.

### **Eliminate the STIP process from restricting Environmental Document Approval**

The Federal Highway Administration is currently restricted to approving environmental documents only on projects that have the next phase of development listed in the STIP. This regulation should be abolished. States should be allowed to develop environmental documents on projects to establish their validity, then include project phases into the appropriate STIP year as funding projections allow. States must have the flexibility to develop an excess number of projects to be in a position to counteract a wide range of project development issues that are beyond their control, and to be in a position to take advantage of spending programs initiated locally or by Congress, such as the recent stimulus package.

States must be afforded the opportunity to use maximum flexibility in today's transportation climate and must be allowed the discretion to make choices on project selection because of the

unknowns that can occur in the environmental, permitting, and right of way arenas that can adversely impact a project development schedule, thus affecting a state's ability to use federal funding to its fullest extent.

The STIP should be used as a planning document to provide the public a general sense of the direction a state is taking to solve transportation issues, not as a checkbook of fund balances.

## **VII. Regulatory Impacts to Project Delivery**

In general, it is our belief that at the project level, when a NEPA document has been approved, new regulatory law, guidance, and endangered species listings should not impact the project development process.

### **Tennessee Valley Authority (TVA)**

Under the TVA Act of 1933 and subsequent TVA policies, the department is regulated by TVA through NEPA and Section 26a of the TVA Act where projects occur in the Tennessee River Watershed. The majority of the state of Tennessee occurs in the Tennessee River watershed and the department experiences significant delays in getting projects under contract due to the regulatory hurdles imposed by TVA. In most cases the regulatory issues that are being addressed have previously been addressed by either FHWA or the Corps of Engineers through an environmental document, or by a Corps of Engineers Section 404 Permit. I have included as part my written testimony a comprehensive response to a recent Executive Order issued by President Obama regarding excessive, inconsistent, and redundant regulation that I believe better describes the impact of TVA regulation on department projects and programs that I believe is pertinent to this discussion.

### **Restrictive Regulatory Constraints concerning existing Transportation Assets**

State and local governments are in need of relief from regulatory restrictions as they impact maintenance, repair, and rehabilitation of existing transportation assets.

Unlike the flexibility available when planning new facilities, agencies wishing to perform maintenance, repair and rehabilitation, must deal with transportation assets, particularly bridges, as they exist in their present location. Transportation agencies face many roadblocks in their desires to perform necessary activities to keep facilities in good condition and to improve safety.

The National Environmental Policy Act (NEPA), the Endangered Species Act, and the International Migratory Bird Treaty have impacted these maintenance types of projects by either delaying their implementation or significantly increasing the project cost.

Some examples of these types of project impacts are;

- The repair and rehabilitation of existing bridges have been denied permits to work in-stream even though the existing supporting substructures are in-stream.
- Some projects with prior permit approvals have been required to be re-designed due to changes in stream quality classifications, new species identification or updated permit agency policies.
- Construction seasons have been dramatically reduced due to permit restrictions in cases that involve endangered, threatened or protected species of bats, birds, fish and mollusks, during mating, nesting, migrating and spawning seasons.
- Construction projects underway have been stopped due to the discovery of some species not previously identified being present or some new species being added to the endangered, threatened or protected species list.
- Flushing of bridges to remove debris and bird droppings has not been allowed even though such matter would otherwise find its way into streams. Lack of permission leads to more rapid deterioration of bridges and endangers the health of bridge inspectors.

The transportation system is the backbone of our economy and the maintenance and repair of this system is the most critical function of transportation agencies across the country. Delays in delivering these types of projects has a significant impact on our budget, the economy, and the traveling public who many time experience the delays when construction is delayed or the project duration is lengthened due to environmental reasons.

## **Conclusion**

I am honored that you have asked for my input in this important piece of legislation. The Tennessee Department of Transportation is a customer focused, data driven agency and we are proud of the transportation network we have created. We will continue to look for ways to improve our transportation system, but as part of a multi-year authorization bill, we need assistance from Congress to help us consolidate funding streams, maximize flexibility in federal programs, streamline project delivery, and reduce regulatory impacts to transportation projects and programs.



**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

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**JOHN C. SCHROER**  
COMMISSIONER

**BILL HASLAM**  
GOVERNOR

March 24, 2011

Mr. John Horsley  
Executive Director  
AASHTO  
444 North Capitol Street, NW  
Suite 249  
Washington, DC 20001

Dear Mr. Horsley:

In response to your letter dated February 3, 2011 as it pertains to revising or eliminating federal regulations that affect transportation, the Tennessee Department of Transportation is pleased to submit our recommendations. Ms. Donna Tamburelli will also be provided same via e-mail as requested by March 25, 2011.

We appreciate the opportunity to submit recommendations for regulatory changes that will enable states to do things better, faster and more cost efficient without sacrificing the environmental and other protections that pertain to federal regulations.

If further information is needed, please contact Mr. Joe Carpenter, Chief of Environment and Planning, at 615.741.2848 or by e-mail [joe.carpenter@tn.gov](mailto:joe.carpenter@tn.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Schroer".

John C. Schroer  
Commissioner

Attachments

JCS:KJC:MTD

Cc: Senator Lamar Alexander, W/Attach.  
Senator Bob Corker, W/Attach.  
Congressman Phil Roe, W/Attach.  
Congressman John J. Duncan, Jr., W/Attach.  
Congressman Chuck Fleischman, W/Attach.  
Congressman Scott DesJarlais, W/Attach.  
Congressman Jim Cooper, W/Attach.  
Congressman Diane Black, W/Attach.  
Congressman Marsha Blackburn, W/Attach.  
Congressman Stephen Fincher, W/Attach.  
Congressman Steve Cohen, W/Attach.  
Ms. Donna Tamburelli, W/Attach.  
Mr. K. Joe Carpenter, Jr., W/Attach.

## **AASHTO Review of Federal Regulations Tennessee Valley Authority and Section 26a Permits**

### **Title of Regulation, Statute or Policy Guidance:**

Section 26a of the Tennessee Valley Act, as amended and implemented regulations issued by the Tennessee Valley Authority (TVA).

### **Citation/Dates of issuance:**

TVA Act of 1933  
TVA 1999 Shoreline Management Policy  
TVA 2006 Land Management Policy  
TVA 2007 Strategic Plan  
TVA 2008 Environmental Policy

### **Description of Specific Issues, Problems, Shortcomings:**

**Regulatory background:** Permits for protecting water resources and water quality, and the environment in general, which apply to transportation construction projects proposed by the Tennessee Department of Transportation (TDOT), are issued by Tennessee's state regulatory agency (Tennessee Department of Environment and Conservation or TDEC) under state law and under Section 401 of the federal Clean Water Act; and by the US Army Corps of Engineers' Regulatory Branches in respective district offices under Section 404 of the Clean Water Act. In making permit decisions, the Corps of Engineers prepares environmental documents under the National Environmental Policy Act (NEPA), typically Categorical Exclusions for water quality impacts that qualify for concurrence under their Nationwide Section 404 Permits; and Environmental Assessments / Findings of No Significant Impact (EA/FONSI) for more significant impacts that do not qualify for coverage under a Nationwide Permit. Coverage under a Nationwide Section 404 Permit typically takes us 30 to 45 days to obtain, while issuance of an Individual Section 404 Permit normally takes from 90 days to six months to obtain. The Corps also regulates navigable waters under Section 10 of the Rivers and Harbors Act.

In addition to these permits, Section 26a of the TVA Act of 1933 charges TVA to regulate navigation, obstructions to water flow and storage, and impacts to TVA lands, within the Tennessee Valley watershed (described by that agency as an 80,000 square mile service area). As it regards to transportation construction projects, TVA has chosen to regulate TDOT under Section 26a with an all-encompassing definition of "obstruction", both above and below their reservoirs, such that virtually every TDOT project with even the slightest impacts to water resources requires a Section 26a Permit. They do this by defining nearly every impact, no matter how minor, as requiring an Individual Section 26a Permit. Each of these Individual 26a Permits has been defined by the TVA as a "major federal action" requiring a full NEPA investigation and issuance of an EA/FONSI prior to issuing the requested permits.

The Corps of Engineers, the appropriate federal regulatory agency for protecting Waters of the United States under the Clean Water Act, has determined that the vast majority of water resource impacts proposed by TDOT qualify for Nationwide Permit coverage. Therefore

reserving Individual Permits for significant impacts such as permanent impacts to at least one-half acre or more of streams or wetlands, and then only when the specific water body being impacted has a "significant nexus" to interstate waters. The TVA, in contrast, having defined "obstructions" to water flow so rigidly as to include the lengthening of small culverts on minor streams as "obstructions", insists on issuing time-consuming Individual Section 26a Permits on nearly all TDOT projects. These permits typically take from 90 days when there are no "unusual" circumstances, to six months or more when the TVA staff is concerned about some aspect of the project. Unlike the Corps and the state regulatory agency, TVA has steadfastly refused to promulgate regulations to establish General 26a Permits. The average duration to obtain Section 26a permits in 2009 was 132 days, and the average in 2010 was 137 days.

**Problem Statement:** Despite TDOT's requests spanning a number of years, TVA has refused to issue regulations implementing General Section 26a Permits for lesser impacts. Approximately a decade ago when we began discussions about their stringent permit requirements, they simply said they did not want to issue General Permits because staff members preferred their use of Individual Permits. Within the last several months TVA staff has changed their opinion to say they cannot establish General Permits without an act of Congress. They say this despite the fact that more than a decade ago they had administratively decided to regulate projects only when the affected watershed encompassed one square mile or more, which they later rescinded to say all water resources must be regulated by TVA regardless of watershed area. In contrast to what TVA now says about Congressional restrictions on TVA's requirements, both of those decisions had been made without any corresponding changes in the TVA Act.

This regulation by the TVA is in most cases, in TDOT's view, redundant to the appropriate Corps of Engineers regulations under the Clean Water Act and NEPA. In addition to regulating the specific water resource impacts proposed in our projects, the Corps incorporates NEPA procedures and documents as part of their permit actions. For federally-funded projects, the Federal Highway Administration (FHWA) also incorporates NEPA requirements into their approval processes. When TVA regulates the same impacts on federally-funded projects, and prepares NEPA documents for their permits, TDOT feels that they are being redundant.

The TVA has identified one person that serves as a single point of contact with TDOT. Unfortunately, this person has no authority to expedite reviews under the 26a Permit processes and only has very limited authority to issue "letters of no objection" for projects with any impacts that would concern TVA. Meetings with our contact person and his superiors have also failed to identify anyone at TVA who has the authority and/or the willingness to address unreasonable reviews or significant delays caused by TVA staff. TDOT submits Section 26a Permit applications to the single point of contact and he distributes them to staff at one of the 12 TVA Land Management Offices, also known as Watershed Teams, with responsibility for certain geographic areas in our state. In addition to the reviews by members of one of the 12 teams, there are also apparently several review points among TVA headquarters staff that have not been clearly identified to TDOT. TDOT staff has been told that 26a Permit applications have to be signed off by persons "at 15 different desks" as one reason why the permits are not issued promptly.

While considering their permit actions, TVA goes far beyond what we believe to be an appropriate level of review. There have been numerous instances in which the State Historic Preservation Office (SHPO), upon receiving reports from TDOT's cultural resource experts, has

approved our projects as having no impacts to historic or archaeological resources and no resources on or eligible for the National Register of Historic Places under appropriate federal and state legislation. Though these SHPO approvals are accepted by both the Corps and TDEC, TVA has frequently subsequently insisted on performing their own review and initiating their own correspondence with the SHPO. TVA has also ignored TDOT supplied project approvals relating to threatened and endangered species granted by the US Fish and Wildlife Service (USFWS), TDEC Natural Heritage Section, and the Tennessee Wildlife Resources Agency (TWRA). These approvals are accepted by both TDEC's regulatory section and the Corps of Engineers, but not by TVA. These unnecessary actions by TVA give the impression that they are doing stringent reviews of items to help ensure that their jobs continue to be considered "essential" in TVA organization.

TDOT has no problem with TVA regulating true obstructions to water flow according to hydraulic calculations, obstructions to water storage, or impacts to TVA land as long as the regulation is reasonable, proportional to the proposed impacts, and pursued timely. TDOT has issues with the project delays TVA causes when obstructions from the proposed TDOT projects are minimal and do not impact their land or reservoirs.

In all the years we have been regulated under Section 26a of the TVA Act, there is not a single instance in which the deliberations and delays of TVA have actually benefitted any water or cultural resource or threatened/endangered species in a TDOT project. These resources are all protected under laws and regulations (pertaining to the Corps of Engineers) put in place subsequent to the TVA Act, and more in tune with actual resource concerns and an appropriate regulatory environment. The only effect is that most projects within the Tennessee Valley requiring a 26a Permit usually take two or three times longer to obtain permits than for those projects not located in the Valley.

**Examples of unnecessary actions by TVA:**

1. In a recent project that had been approved by the USFWS and TWRA as having no threatened or endangered species at or near the project site, the TVA species reviewer insisted that TDOT do an on-site mussel survey for a species having no records at the site any more recent than 30 years ago. This insistence was based only on the reviewer's looking at a photograph of the project site. The TDOT biologist held several conversations and exchanged emails with the TVA species reviewer stating that he had been to the site and the species was not present and potential habitat for the species was extremely limited, but the TVA reviewer insisted on our doing the survey (or saying he would do the survey himself several months later when he had the time), before the Section 26a Permit could be issued. The subsequent mussel survey TDOT conducted confirmed the absence of any mussels in the project area. This TVA requirement delayed construction of the project by several months.
2. On another recent project, TDOT had received clearance from our cultural resource experts, approval from the SHPO, and concurrence from the Corps as having no resources eligible for or on the National Register of Historic Places. The TVA cultural resources reviewer insisted that to receive a 26a Permit, TDOT must study and report to TVA on a concrete wall that was inundated by lake water most of the time. Additionally, the wall was located off existing and proposed right-of-way and thus would not be disturbed by the project. TVA thought it may have been part of an old mill that had been

completely removed (except for the wall) years before. In addition, because the wall was under water most of the time, TVA's requirement delayed the project for nearly a year, for a non-impacted "cultural resource."

3. On a recent project with significant wetland and stream impacts requiring an Individual Section 404 Permit, the TVA decided to adopt the Corps' Environmental Assessment (EA) instead of writing their own. Due to concerns about mitigation of the wetland and stream impacts, it took approximately eight months for the Corps to complete their approval process and prepare their EA. The TVA does not regulate or approve wetland impacts or mitigation, and could have thus written their own EA/FONSI at the beginning of the permit process. Since the TVA waited for the Corps EA, which was concentrating on issues of no importance to TVA, the 26a Permit - which could have been issued five months into the process after the state agency issued its Section 401 Water Quality Certification, has now taken nine months and counting. The TVA has unnecessarily delayed the project for months after the TDEC approval and weeks after the Corps approval were received. To date, we still have yet to receive the 26a Permit, after submitting our permit application more than nine months prior.

#### **Recommendations for Modification, Elimination:**

We do not make these recommendations lightly. It is only after years of discussions with TVA personnel, to no avail both at the operational and executive levels that we believe the only recourse is through Congressional or high-level Executive Branch corrections or interventions. We are of the opinion that TVA's insistence that they cannot change their levels and methods of scrutiny and regulation is little more than bureaucratic unwillingness to improve their operations. Since they insist, rightly or wrongly, that Congress must be involved in improving their processes, we make the following recommendations.

The Tennessee Department of Transportation recommends that the Tennessee Valley Authority (TVA) be required, by act of Congress or action of higher levels of the Executive Branch, as appropriate, to:

- Revise their definitions of "obstructions to water flow" to include only those "obstructions" that are real – instances where the hydraulic capacity of the water conveyances on the project would actually be materially reduced as determined by TDOT hydraulic calculations.
- Exempt from regulation using Individual Section 26a Permits any proposed projects that are not physically located on a TVA reservoir or that directly impact TVA fee-owned land.
- Promptly promulgate regulations establishing a General Section 26a Permit category for projects that cause real obstructions to hydraulic capacity but are not located on a TVA reservoir and do not directly impact TVA fee-owned land.
- Promptly issue "letters of no objection" for projects that are not physically located on a TVA reservoir, do not directly impact TVA fee-owned property, and do not materially reduce the hydraulic flow capacity, as determined by TDOT's hydraulic calculations, of the water conveyances on the project.
- Cease regulating projects under requirements of NEPA when NEPA documents are already being processed by the Corps of Engineers and/or Federal Highway Administration, except on reservoirs or TVA-owned land. If TVA is to administer NEPA

requirements at all, TVA should be required to simply and promptly accept the NEPA document prepared by the Corps or approved by the FHWA, whichever is completed first. TVA's NEPA requirements should be defined as requiring an EA/FONSI only on Individual Section 26a Permit actions, with the use of categorical exclusions for all other projects requiring any TVA NEPA process.

- Cease issuing permits under Section 26a in cases where the same water resources are being regulated under the Clean Water Act by the Corps of Engineers, excepting real obstructions to water flow, or impacts located on TVA reservoirs or TVA fee-owned land.
- Set strict timeliness regulations governing their own staff, such that Individual Section 26a Permits cannot take more than 90 days to process in all but the most unusual circumstances.
- Be required to accept the determinations of the State Historic Preservation Office for cultural resources, and the USFWS for threatened or endangered species, without time-consuming TVA reviews and approvals of the reports that lead to those determinations or of the determinations themselves.
- Seriously limit the level and number of TVA staff reviews required during the Individual Section 26a Permit process, significantly reducing the number of locations and number of staff persons responsible for signing off on the permits.

**Name of Person Submitting:**

Tennessee Department of Transportation  
Suzanne B. Herron, Director of Environmental Division

**AASHTO Committee of Interest:**

Standing Committee on Environment

## **AASHTO Review of Federal Regulations**

### **Title of Regulation, Statute or Policy Guidance:**

Title 23- Highways  
Subpart D- general material requirements

### **Citation/Dates of issuance:**

23 CFR635.411/ April 1, 2001

### **Description of Specific Issues, Problems, Shortcomings:**

Section 635.411 material or product selection allows the restriction of a patented or proprietary product to be loosened.

The time necessary to get permission for an item is unaccepted periodically due to project schedules.

### **Recommendations of Modifications, Elimination:**

Allow the Transportation Commissioner, State Engineer, department finance director or their designee in the state to approve the use of a specific material or product. This would allow the approvable to be closer to the point of need and as such approval/denial could be made from the vantage point of product need instead of procedural action only.

This approval could be connected to a cost per item limit or a limited group of item types or item number groups, etc.

### **Name of Person Submitting:**

Tennessee Department of Transportation  
Steve Allen, Director of Project Planning

### **AASHTO Committee of Interest:**

# 31062

AMERICAN ASSOCIATION OF  
STATE HIGHWAY AND  
TRANSPORTATION OFFICIALS

**AASHTO**  
THE VOICE OF TRANSPORTATION

SUSAN MARTINOVICH, P.E., PRESIDENT  
DIRECTOR, NEVADA DEPARTMENT OF TRANSPORTATION

JOHN HORSLEY, EXECUTIVE DIRECTOR

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February 3, 2011

TN Dept. of Transportation  
Commissioner's Office  
**RECEIVED**

FEB 08 2011

John Schroer  
Commissioner  
Tennessee Department of Transportation  
James K. Polk Bldg., Suite 700  
Nashville, TN 37243-0339

Dear Mr. Schroer:

Just two weeks ago President Obama issued an executive order calling on all federal agencies to conduct a review of their regulations with the aim of avoiding "excessive, inconsistent, and redundant regulation," and to see if helpful revisions can be made. President Susan Martinovich has directed me to contact each state CEO and each AASHTO committee and subcommittee chair to request their assistance in developing recommendations for revising or eliminating regulations. AASHTO will submit these recommendations to U.S. DOT regarding the department's regulations and to OMB regarding regulations that affect transportation from other federal agencies.

We are looking for regulatory changes that will enable states to do things better, faster, and cheaper, but without sacrificing the environmental and other protections the regulations were intended to provide when originally issued. Both FHWA and U.S. DOT's General Counsel have said that they welcome our input.

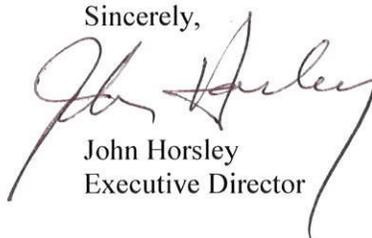
We would greatly appreciate the assistance of your staff in identifying regulations that hinder your department's ability to plan, design, deliver, and manage projects – as well as to maintain and operate your state's transportation system in an efficient and effective manner. We would also appreciate your recommendations as to how these regulations can be improved. Examples we have identified that you may want to consider include EPA's potential regulations regarding storm water, CEQ's guidance on Categorical Exclusions, and FHWA's restrictions on State DOT use of proprietary products.

Please submit your recommendations regarding regulations that should be changed and how they should be changed, using the attached template, to Donna Tamburelli at [donnat@aaasho.org](mailto:donnat@aaasho.org) by March 25. This will allow us to consolidate the recommendations we receive from all states and committees into a combined AASHTO set of recommendations by the end of the first week of April.

Susan sees this as a great opportunity to ask for changes that could prove helpful in accelerating project delivery, reducing state costs, and improving the responsiveness of states to the citizens we serve. We strongly agree with her.

We greatly appreciate your assistance.

Sincerely,



John Horsley  
Executive Director

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FEB 08 2011  
CONSTITUENT SERVICES

Attachment

## **AASHTO Review of Federal Regulations**

**Title of Regulation, Statute or Policy Guidance:**

**Citation/Dates of issuance:**

**Description of Specific Issues, Problems, Shortcomings:**

**Recommendations for Modification, Elimination:**

**Name of Person Submitting:**

**AASHTO Committee Of Interest:**