

PROCEDURES FOR INTER-AGENCY CONSULTATION FOR CONFORMITY FOR HAMPTON ROADS



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REPORT DOCUMENTATION

TITLE

Procedures for Inter-Agency Consultation for Conformity for Hampton Roads

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ABSTRACT

This report specifies the procedures for Inter-Agency Consultation for Conformity (IACC) for all amendments and updates to the Hampton Roads Transportation Planning Organization (HRTPO) Long-Range Transportation Plan (LRTP) and Transportation Improvement Program (TIP). The report also includes an overview of the current air quality planning status and regulatory context for the region, key principles for IACC, and detailed key steps for the conformity consultation process and development of Regional Conformity Assessments (RCAs).

ACKNOWLEDGMENT & DISCLAIMERS

Prepared in cooperation with the U.S. Department of Transportation (USDOT), Federal Highway Administration (FHWA), and Virginia Department of Transportation (VDOT). The contents of this report reflect the views of the Hampton Roads Transportation Planning Organization (HRTPO) and VDOT. Both the HRTPO and VDOT are responsible for the facts and the accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the FHWA or the Hampton Roads Planning District Commission.

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The HRTPO assures that no person shall, on the ground of race, color, national origin, handicap, sex, age, or income status as provided by Title VI of the Civil Rights Act of 1964 and subsequent authorities, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity. The HRTPO Title VI Plan provides this assurance, information about HRTPO responsibilities, and a Discrimination Complaint Form.

Procedures for Inter-Agency Consultation Conformity for Hampton Roads

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LIST OF ACRONYMS

CAA	Clean Air Act
DOT	Department of Transportation
EPA	Environmental Protection Agency
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
HRAQC	Hampton Roads Air Quality Committee
HRTPO	Hampton Roads Transportation Planning Organization
IACC	Interagency Consultation for Conformity
LPO	Lead (Air Quality) Planning Organization
LRTP	Long-Range Transportation Plan
MPO	Metropolitan Planning Organization
MVEB	Motor Vehicle Emission Budget
PPP	Hampton Roads Public Participation Plan
RCA	Regional Conformity Assessment
SC II	South Coast II Court Decision
SIP	State (Air Quality) Implementation Plan
TIP	Transportation Improvement Program
TTAC	Transportation Technical Advisory Committee
VDEQ	Virginia Department of Environmental Quality
VDOT	Virginia Department of Transportation
VDRPT	Virginia Department of Rail and Public Transportation

1.0 INTRODUCTION

The procedures for Inter-Agency Consultation for Conformity (IACC) specified here apply for all amendments and updates to the Hampton Roads Transportation Planning Organization (HRTPO)¹ Long-Range Transportation Plan (LRTP) and Transportation Improvement Program (TIP). The main report presents an overview of the current air quality planning status and regulatory context for the region, key principles for IACC, and detailed key steps or procedures for the conformity consultation process and development of Regional Conformity Assessments (RCAs). The procedures for amendments are streamlined relative to those for periodic major updates to the plan and/or TIP, for which details of both are specified in Sections 3 and 4. The responsibility for leading the conformity process also differs for amendments and updates, as specified in Section 3.4.

The appendices provide additional detail as follows:

- **Appendix A** provides detailed documentation of the applicable regulatory requirements and how they are met by these procedures.
- **Appendix B** provides a sample format for the fiscally-constrained project list to be attached to each RCA.
- **Appendix C** presents a detailed flowchart of the conformity processes for amendments and updates.

¹ The HRTPO is the designated metropolitan planning organization (MPO) for the region. See: <http://www.hrtpo.org/>

2.0 AIR QUALITY PLANNING STATUS

At the time of preparation of these procedures, the region is in attainment with all of the National Ambient Air Quality Standards (NAAQS) that have been established by the US Environmental Protection Agency (EPA).² While the region was previously in maintenance for the 1997 eight-hour ozone NAAQS, that standard was revoked by EPA in 2015.

- On June 1, 2007, the EPA approved via Federal Register notice³ a re-designation request and State (air quality) Implementation Plan revision (2007 SIP or "maintenance plan") for the 1997 eight-hour ozone standard for Hampton Roads as submitted by the Virginia Department of Environmental Quality (VDEQ).⁴ The designated maintenance area included the Counties of Gloucester, Isle of Wight, James City, and York, and the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.⁵ Motor Vehicle Emission Budgets (MVEBs) were specified that required regional transportation network and emission modeling to demonstrate conformity for each amendment and update to the LRTP and/or TIP.
- On March 6, 2015 (effective April 6, 2015), EPA published the final implementation rule for the more stringent 2008 ozone NAAQS and at the same time revoked the 1997 ozone NAAQS for which the region had been in maintenance.⁶ As such, the associated transportation conformity requirements were eliminated.
- On September 9, 2022, a second ten-year maintenance plan was submitted by VDEQ to satisfy Clean Air Act requirements.

Figure 1 presents the jurisdictions in Hampton Roads that were included in the 1997 eight-hour ozone maintenance area, which were not changed in the second maintenance plan.

² <https://www.epa.gov/criteria-air-pollutants/naaqs-table>

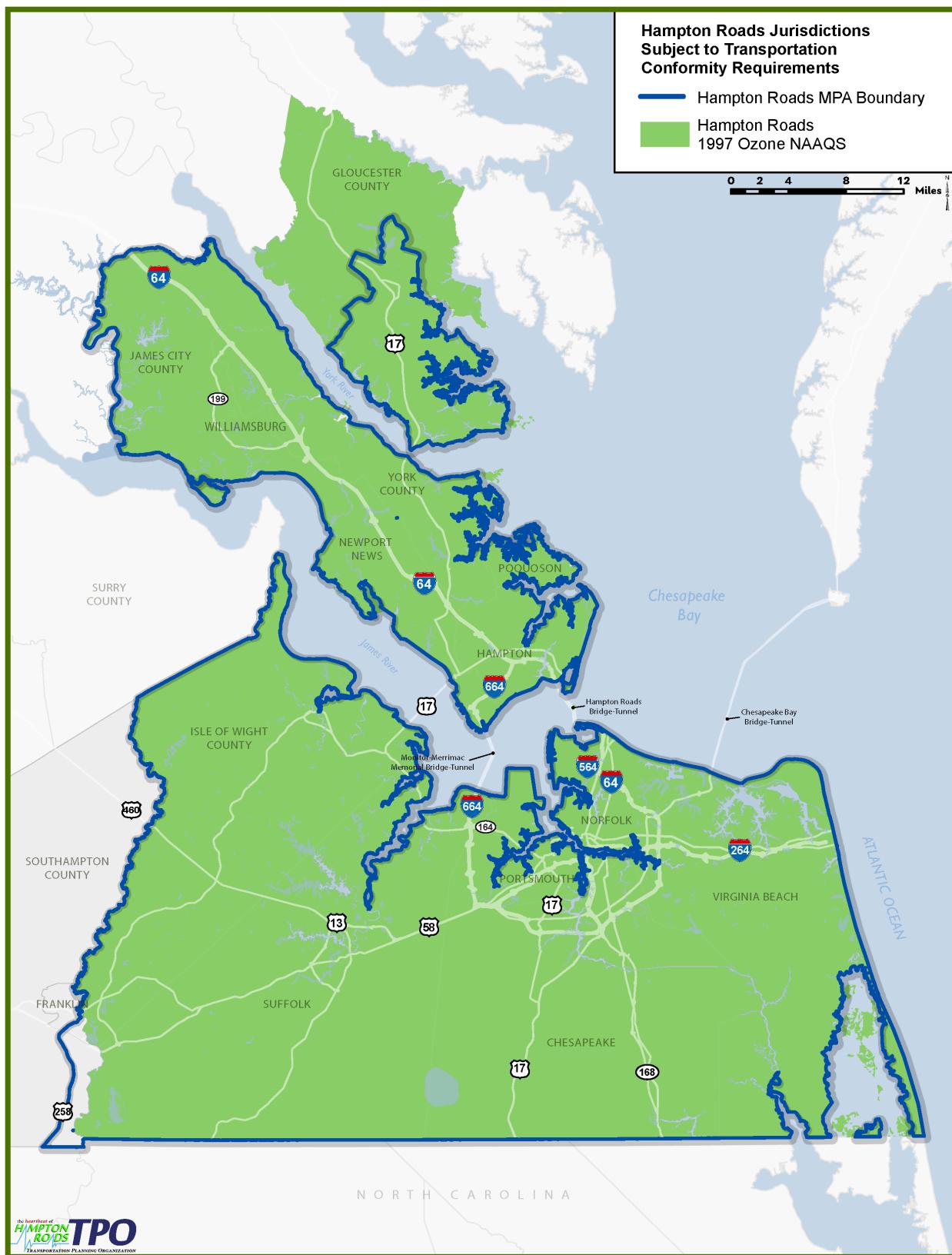
³ US EPA, "Approval and Promulgation of Air Quality Implementation Plans; Virginia; Re-designation of the Hampton Roads 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and 2002 Base-Year Inventory," 72 FR 30490, 40 CFR Parts 52 and 81 [EPA-R03-OAR-2006-0919; FRL-8320-9], Final Rule, effective June 1, 2007. See: <http://edocket.access.gpo.gov/2007/E7-10581.htm>.

⁴ A second ten-year maintenance plan has been developed by VDEQ to satisfy Clean Air Act requirements, i.e., not for reasons related to the attainment status of the region or the transportation sector. VDEQ submitted the second ten-year maintenance plan to EPA on 9/9/2022. It does not however go into effect until it has been approved by EPA, which is pending at the time of preparation of these procedures.

⁵ For reference, the Hampton Roads metropolitan planning area (MPA) is shown on the HRTPO website at <https://www.hrtpo.org/page/member-jurisdictions/> with the following description: "At a minimum, a Metropolitan Planning Area (MPA) must cover the urbanized area and contiguous geographic areas likely to become urbanized within the next 20 years. Currently, the cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg; the counties of Isle of Wight, James City, and York; and portions of the City of Franklin and the counties of Gloucester and Southampton are included in the MPA." Note the Hampton Roads MPA therefore does not include a portion of Gloucester County that was included in the maintenance area and also includes jurisdictions that were not included in the maintenance area, namely "portions of" the City of Franklin and Southampton County.

⁶ "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements," EPA, 80 FR 1226, March 6, 2015. See: <https://www.govinfo.gov/content/pkg/FR-2015-03-06/pdf/2015-04012.pdf>

Figure 1: Hampton Roads Jurisdictions Subject to Transportation Conformity Requirements



3.0 REGULATORY CONTEXT

The consultation procedures specified here are consistent with all applicable federal⁷ and state⁸ requirements and guidance for transportation conformity. For background, the FHWA 2017 guide⁹ on transportation conformity states:

"The concept of transportation conformity was introduced in the Clean Air Act (CAA) of 1977, which included a provision to ensure that transportation investments conform to a State implementation plan (SIP) for meeting the Federal air quality standards. Conformity requirements were made substantially more rigorous in the CAA Amendments of 1990. The transportation conformity regulations... that detail implementation of the CAA requirements were first issued in November 1993, and have been amended several times. The regulations establish the criteria and procedures for transportation agencies to demonstrate that air pollutant emissions from metropolitan transportation plans, transportation improvement programs and projects are consistent with ("conform to") the State's air quality goals in the SIP."

and

"Transportation conformity is required under CAA Section 176(c) to ensure that Federally-supported transportation activities are consistent with ("conform to") the purpose of a State's SIP. Transportation conformity establishes the framework for improving air quality to protect public health and the environment. Conformity to the purpose of the SIP means Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) funding and approvals are given to highway and transit activities that will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the relevant air quality standard, or any interim milestone."

Note, per the federal regulation, federal transportation conformity requirements apply only in the absence of corresponding requirements in the state conformity regulation.¹⁰ The latter is also referred to as the state "conformity SIP" or "conformity implementation plan." Note the Virginia regulation incorporates by reference most of the requirements in the July 1, 2012 federal rule from 40 CFR 923.101 to 93.129, with the notable exception of 40 CFR 93.105¹¹ which addresses consultation.¹² The Virginia regulation provides detailed requirements for consultation that are specific to Virginia but otherwise reflect the consultation requirements in 40 CFR 93.105.

⁷ EPA Conformity Regulation and Guidance: <https://www.epa.gov/state-and-local-transportation/current-law-regulations-and-guidance-state-and-local-transportation>. Direct links:

- <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-51#subpart-I>
- <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-93#part-93>

⁸ VA Regulation for Transportation Conformity (9 VAC5-151): <https://law.lis.virginia.gov/admincode/title9/agency5/chapter151/>

⁹ Excerpts from the Executive Summary for FHWA, "Transportation Conformity: A Basic Guide for State & Local Officials," 2017. See: https://www.fhwa.dot.gov/environment/air_quality/conformity/2017_guide/guide01.cfm

¹⁰ 40 CFR 51.390: "...The federal conformity rules under part 93, subpart A, of this chapter... establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act section 176(c) until such time as EPA approves the conformity implementation plan revision required by this subpart... The federal conformity regulations contained in part 93, subpart A, of this chapter would continue to apply for the portion of the requirements that the state did not include in its conformity implementation plan and the portion, if any, of the state's conformity provisions that is not approved by EPA." <https://ecfr.federalregister.gov/current/title-40/chapter-I/subchapter-C/part-51.390#51.390>

¹¹ EPA Conformity Rule Requirements for Consultation.

- <https://ecfr.federalregister.gov/current/title-40/chapter-I/subchapter-C/part-93#93.105>

¹² See: 9VAC5-151-40. General <https://law.lis.virginia.gov/admincode/title9/agency5/chapter151/section40/> and 9VAC5-151-50. Designated provisions: <https://law.lis.virginia.gov/admincode/title9/agency5/chapter151/section50/>

3.0 REGULATORY CONTEXT

3.1 Regulatory Requirements for Consultation for Transportation Conformity

Consultation requirements are specified in the Virginia Regulation for Transportation Conformity at 9 VAC 5-151-70¹³ that reflect the federal requirements at 40 CFR 93.105. Consistent with 40 CFR 51.390 as referenced above, the federal conformity consultation requirements apply only in the absence of corresponding requirements in the state conformity regulation. These procedures therefore are based on the requirements for IACC and associated public review as specified in the state conformity regulation. Appendix A provides a detailed summary of the applicable regulatory requirements for IACC from the state conformity regulation and how they are met by these procedures. Note the IACC procedures for Hampton Roads specified in this document do not add any requirements to those specified in the state conformity regulation.

3.2 South Coast II Court Decision Reinstating Conformity Requirements

On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit in South Coast Air Quality Mgmt. District v. EPA¹⁴ ("South Coast II" or "SC II") held in its decision that transportation conformity determinations must be made in all areas nation-wide that were either nonattainment or maintenance for the 1997 ozone NAAQS and attainment for the 2008 ozone NAAQS when the 1997 ozone NAAQS was revoked in 2015. The reinstated conformity requirements were subsequently made effective February 16, 2019.¹⁵ The Hampton Roads region met both conditions: 1) it was in maintenance for the 1997 ozone NAAQS at the time of its revocation by EPA, and 2) at that time had already been designated attainment (on May 21, 2012) for the 2008 ozone NAAQS.¹⁶ Therefore, per the SC II decision, and notwithstanding the revocation by EPA of the 1997 ozone NAAQS in 2015 and that the region remains in attainment for all of the NAAQS including the more stringent 2008 and 2015 ozone NAAQS, conformity requirements for the 1997 ozone NAAQS were made to apply again for Hampton Roads.

The SC II ruling did not specify an expiration date for the reinstated conformity requirements. However, per the conformity rule at 40 CFR 93.102(b)(4), transportation conformity requirements for a region expire when its maintenance plan expires.^{17,18} Therefore, when the second ten-year

¹³ VA Conformity SIP Consultation Requirements: <https://law.lis.virginia.gov/admincode/title9/agency5/chapter151/section70/>

¹⁴ Decision by the US Court of Appeals for the DC Circuit in South Coast Air Quality Management District v. EPA ("South Coast II," 882 F.3d 1138). See: [https://www.cadc.uscourts.gov/internet/opinions.nsf/217B6778AE3EC89C8525823600532AE0/\\$file/15-1115-1718293.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/217B6778AE3EC89C8525823600532AE0/$file/15-1115-1718293.pdf)

¹⁵ See: FHWA, "Updated: Interim Guidance on Conformity Requirements for the 1997 Ozone NAAQS", memorandum dated October 1, 2018. On p.2, the updated interim guidance states: "After the Court issued its ruling in February 2018, EPA filed a petition for rehearing on various issues, both as to the merits of the Court's ruling and the remedy imposed by the Court. On September 14, 2018, the Court denied EPA's request for rehearing on the merits, but stayed its vacatur of the transportation conformity aspects of its ruling until February 16, 2019. In essence, the Court provided EPA with one year from the date of its original decision to implement its ruling, and that year expires on February 16, 2019."

¹⁶ See: <https://www.govinfo.gov/content/pkg/FR-2012-05-21/pdf/2012-11618.pdf>

¹⁷ 40 CFR 93.102(b)(4): "The provisions of this subpart apply to maintenance areas through the last year of a maintenance area's approved CAA section 175A(b) maintenance plan, unless the applicable implementation plan specifies that the provisions of this subpart shall apply for more than 20 years." See: <https://ecfr.federalregister.gov/current/title-40/chapter-I/subchapter-C/part-93#93.102>

¹⁸ "Transportation Conformity Guidance for Areas Reaching the End of the Maintenance Period," EPA-420-B-14-093, October 2014, p.1. See the EPA Conformity Guidance webpage: <https://www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation#state>.

Direct link: <http://nepis.epa.gov/Exe/ZyPDF.cgi/P100KPP0.PDF?Dockey=P100KPP0.PDF>

3.0 REGULATORY CONTEXT

maintenance plan expires on December 31, 2032, the transportation conformity requirements mandated under SC II would also expire. Note the second ten-year maintenance plan does not add MVEBs, transportation control measures (TCMs), or any other requirement for transportation conformity, so the only requirements that apply in this region through the expiration date of the second ten-year maintenance plan are those imposed under SC II.

3.3 Federal Guidance Implementing the South Coast II Court Decision

3.3.1 EPA Guidance and Transportation Conformity Criteria under South Coast II

EPA criteria for demonstrating conformity for transportation plans, programs and projects are specified in Table 1 of 40 CFR 93.109.¹⁹ In November 2018, EPA issued guidance²⁰ for implementing the SC II court decision that streamlined the application of those criteria by confirming that the applicable 1997 ozone NAAQS had been revoked and therefore a regional emission analysis (i.e., modeling) to show conformity is not required for areas that are impacted by that court decision.²¹ Based on that guidance from EPA, and as transportation control measures (TCMs) were not included in an applicable SIP (neither the 2007 maintenance plan previously applicable nor the 2022 second ten-year maintenance plan), transportation conformity for the 1997 ozone NAAQS can be demonstrated for the Hampton Roads region by simply showing that the two remaining EPA criteria in Table 1 in 40 CFR 93.109 have been met, namely fiscal constraint²² and consultation.²³

3.3.2 FHWA Guidance

To support implementation of the EPA SC II guidance, the Federal Highway Administration (FHWA) issued both guidance²⁴ and a template report for RCAs.²⁵ As EPA guidance eliminated regional emission analysis (modeling) requirements for SC II areas, the FHWA template report for RCAs for these areas does not include sections for models, methods and assumptions, emission modeling, or MVEB tests.²⁶

¹⁹ EPA Conformity Rule Conformity Criteria: *40 CFR 93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects*: <https://ecfr.federalregister.gov/current/title-40/chapter-I/subchapter-C/part-93#93.109>
Note: Should the region fall into nonattainment or maintenance in the future, then these conformity procedures would automatically include all EPA conformity rule criteria as listed in this table (or updated versions if EPA amends table in the future).

²⁰ EPA, "Transportation Conformity Guidance for the South Coast II Court Decision", November 2018, EPA-420-B-18-050. <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100VQME.pdf>

²¹ Ibid, p.11: "The South Coast II court decision upheld EPA's revocation of the 1997 ozone NAAQS, which was effective on April 6, 2015. EPA's current transportation conformity regulation requires a regional emissions analysis only during the time period beginning one year after a nonattainment designation for a particular NAAQS until the effective date of revocation of that NAAQS (40 CFR 93.109(c)). Therefore, pursuant to this regulation, a regional emissions analysis is not required for conformity determinations for the 1997 ozone NAAQS because that NAAQS has been revoked (80 FR 12264)."

²² EPA Conformity Rule Fiscal Constraint Requirement: *40 CFR § 93.108 Fiscal constraints for transportation plans and TIPs*. "Transportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR part 450 in order to be found in conformity." <https://ecfr.federalregister.gov/current/title-40/chapter-I/subchapter-C/part-93#93.108>

²³ EPA Conformity Rule Consultation Criterion *40 CFR § 93.112*. <https://ecfr.federalregister.gov/current/title-40/chapter-I/subchapter-C/part-93#93.112>

²⁴ FHWA, "Updated: Interim Guidance on Conformity Requirements for the 1997 Ozone NAAQS", October 1, 2018

²⁵ "Optional Template MTP TIP 1997 Ozone Conformity Determination.docx," which was provided as an attachment to email from FHWA HQ (A. Marchese) to FHWA Division Administrators on 1/3/2019.

²⁶ If federal and/or state regulations are changed in the future to again require modeling, or the region in the future falls into nonattainment/maintenance for one or more of the applicable NAAQS established by EPA, then these IACC Procedures would automatically include consultation on models, methods and assumptions for the conformity analysis, with associated implications

3.0 REGULATORY CONTEXT

3.4 Lead Agency for Conformity

The state conformity regulation at 9 VAC 5-151-70 (c)(1)(a) specifies that "...MPOs [metropolitan planning organizations], or their designee, shall be the lead agencies responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the transportation plan, the TIP, and any amendments or revisions thereto..." and "The MPOs shall be the lead agencies responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to any determinations of conformity under this chapter for which the MPO is responsible."²⁷ With the adoption of these procedures by the HRTPO Board, HRTPO is designated as the lead agency for conformity for the Hampton Roads region, working in consultation and cooperation with VDOT for this purpose.

In practice:

- HRTPO will lead all conformity processes unless specified otherwise in these procedures.
 - HRTPO will administer the conformity process, including the conduct of IACC and public review as well as the preparation of all conformity-related agendas and agenda items, email, web postings, minutes, etc.
 - HRTPO will document fiscal constraint.
 - HRTPO will conduct conformity assessments and prepare streamlined RCAs for *amendments* (and, at their discretion, updates) to the plan and/or program, and approve RCAs and updates to consultation procedures.²⁸
- VDOT Environmental Division:²⁹
 - VDOT will serve as technical advisers to HRTPO on conformity requirements as appropriate.
 - VDOT may lead the development of RCAs for periodic *updates* to the plan and/or program and transmit the final RCAs for updates to FHWA to initiate the federal review and approval process.
- Note references to HRTPO and VDOT taking the lead on actions in this document generally refer to HRTPO taking the lead on all actions and VDOT taking the lead (at HRTPO discretion) on the preparation of the draft RCA for plan and/or program updates.

for the conformity schedule and the need to pass the applicable conformity tests. The RCA would document the modeling procedures and results as well as the applicable conformity tests.

²⁷ See: <https://law.lis.virginia.gov/admincode/title9/agency5/chapter151/section70/>

²⁸ Note RCAs for amendments are typically more streamlined than those for updates, as discussed in Section 4.8.1.

²⁹ Should regional emission analyses be again made a requirement in the future, VDOT will take the lead on emission modeling as needed and HRTPO on traffic modeling.

3.0 REGULATORY CONTEXT

3.5 Applicability

A conformity determination³⁰ (and therefore IACC) is required for all updates to the plan and/or program and, unless the amendment only adds or deletes exempt projects listed in 40 CFR 93.126,³¹ all amendments.³² The required frequency of conformity determinations is specified in 40 CFR 93.104.³³ Definitions for updates and amendments are as specified in the federal transportation planning rule.³⁴ Note administrative modifications as defined in the planning rule do not require a conformity determination.³⁵

3.6 Programmatic Approaches

HRTPO, at their discretion, may implement policies and/or programmatic approaches to facilitate the implementation of these procedures. This includes programmatic approaches or MPO policies implemented for planning and programming purposes (and not for conformity specifically) that may nonetheless benefit or complement the implementation of these conformity procedures. For example, a policy that affects the determination of what constitutes an amendment may effectively streamline the number of amendments that require an RCA.

3.7 Revocation of Previous Procedures

With the adoption of these procedures by the HRTPO Board, the procedures³⁶ approved in 2005 by the HRTPO Board are revoked and the associated Inter-Agency Consultation Group (ICG) discontinued.

³⁰ Neither the Virginia nor the EPA conformity rule provides a definition for a “conformity determination.” In context, it refers to a finding of conformity (approval) by FHWA/FTA for proposed amendment(s) and update(s) to the transportation plan and program. An RCA provides the supporting documentation that all of the applicable conformity criteria have been met and therefore an FHWA/FTA finding of conformity is warranted.

³¹ 40 CFR 93.126– Exempt Projects: <https://ecfr.federalregister.gov/current/title-40/chapter-I/subchapter-C/part-93#93.126>

³² 9VAC5-151-20: <https://law.lis.virginia.gov/admincode/title9/agency5/chapter151/section20/>, which reflect the federal rule at 40 CFR 93.102: <https://ecfr.federalregister.gov/current/title-40/chapter-I/subchapter-C/part-93#93.102>

³³ 40 CFR 93.104 Frequency of conformity determinations. See 40 CFR 93.104(b) for plans and 40 CFR 93.104(c) for programs. <https://ecfr.federalregister.gov/current/title-40/chapter-I/subchapter-C/part-93#93.104>

³⁴ 23 CFR §450.104 Definitions. See: https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=077e9fecfdc39e9998a91fc8d350c8e3&mc=true&n=pt23.1.450&r=PART&ty=HTML#se23.1.450_1104

- “Amendment means a revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that involves a major change to a project included in a metropolitan transportation plan, TIP, or STIP, including the addition or deletion of a project or a major change in project cost, project/project phase initiation dates, or a major change in design concept or design scope (e.g., changing project termini or the number of through traffic lanes or changing the number of stations in the case of fixed guideway transit projects). Changes to projects that are included only for illustrative purposes do not require an amendment. An amendment is a revision that requires public review and comment and a redemonstration of fiscal constraint. If an amendment involves “non-exempt” projects in nonattainment and maintenance areas, a conformity determination is required.”
- “Update means making current a long-range statewide transportation plan, metropolitan transportation plan, TIP, or STIP through a comprehensive review. Updates require public review and comment, a 20-year horizon for metropolitan transportation plans and long-range statewide transportation plans, a 4-year program period for TIPs and STIPs, demonstration of fiscal constraint (except for long-range statewide transportation plans), and a conformity determination (for metropolitan transportation plans and TIPs in nonattainment and maintenance areas).”

³⁵ 23 CFR §450.104 Definitions. See: https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=077e9fecfdc39e9998a91fc8d350c8e3&mc=true&n=pt23.1.450&r=PART&ty=HTML#se23.1.450_1104

“Administrative modification means a minor revision to a long-range statewide or metropolitan transportation plan, Transportation Improvement Program (TIP), or Statewide Transportation Improvement Program (STIP) that includes minor changes to project/project phase costs, minor changes to funding sources of previously included projects, and minor changes to project/project phase initiation dates. An administrative modification is a revision that does not require public review and comment, a redemonstration of fiscal constraint, or a conformity determination (in nonattainment and maintenance areas).”

³⁶ “Consultation Procedures for the Hampton Roads Ozone Nonattainment Area in Support of the Transportation Conformity Regulations,” Revised July 18, 2005.

4.0 GUIDING PRINCIPLES FOR CONSULTATION FOR CONFORMITY

The following guiding principles for conformity consultation processes were developed based on extensive experience in conducting regional conformity assessments for the region and are intended to streamline and facilitate future conformity consultation processes and the preparation of RCAs. The procedures specified in the next section are based on these principles and may be modified at HRTPO discretion consistent with these principles.

4.1 Streamlining

A guiding principle or focus for IACC for this region is that it be streamlined to the extent feasible and appropriate with minimal disruption to established MPO committees and processes, while remaining compliant or consistent with all applicable regulatory requirements and guidance as appropriate.

A streamlined approach is particularly warranted under SC II, as EPA guidance streamlined the federal criteria for conformity determinations by eliminating regional emission analysis (modeling) requirements and associated motor vehicle emission budget tests. As a result, IACC under SC II is effectively a consultation exercise on a very limited set of remaining conformity criteria that do not directly pertain to air quality.³⁷

4.2 IACC Communication Options

Any reasonable method for conducting IACC may be selected at the discretion of the HRTPO and VDOT. Options include but are not limited to one or more of the following: email, conference calls, remote participation or in-person meetings, and any other reasonable means. These and other options may be selected on a case-by-case basis. A time period for IACC is not specified in these procedures as it may vary based on the communication option selected, and range for example from the time required for an IACC agenda item at TTAC to a week or so for IACC by email.

4.3 IACC Limitation to Consultation

While both the federal and state transportation conformity rules require IACC, neither require voting or consensus on items subject to IACC nor the establishment of a separate committee for purposes of IACC. Therefore, consistent with the stated focus of these procedures on streamlining the process with minimal disruption to established MPO committees and processes, and consistent with applicable federal and state transportation conformity rule requirements:

³⁷ At the time of preparation of these procedures, the only applicable federal conformity rule criteria for Hampton Roads are fiscal constraint and consultation. Transportation control measures (TCMs) were not specified in the air quality maintenance plan established by VDEQ and are therefore not applicable as a criterion for conformity for this region. Conformity criteria for orphan areas are summarized in section 2.4 of EPA SC II guidance. See: <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100VQME.pdf>

4.0 GUIDING PRINCIPLES FOR CONSULTATION FOR CONFORMITY

- IACC for this region is limited to consultation only. Voting and/or seeking consensus on items subject to IACC are not required.³⁸
- All IACC will be conducted via HRTPO standing committees. A separate committee for IACC is neither required nor established in these procedures.

4.4 IACC and Approvals via HRTPO Standing Committees

IACC will be conducted via HRTPO standing committees and follow their respective bylaws and procedures. The standing committee primarily involved in IACC for Hampton Roads is the HRTPO Transportation Technical Advisory Committee (TTAC).³⁹ On occasion, the HRTPO (MPO) Board may participate in IACC, e.g., in the rare instance that in the interests of time an amendment is brought directly to the TPO, bypassing the window of opportunity for IACC via TTAC.

Similarly, all recommendations to approve and all approvals of draft RCAs will follow the bylaws and procedures of the respective HRTPO committee (TTAC or Board) including their respective quorum requirements.⁴⁰

4.5 Parties to Consultation

Invitations to participate in IACC will be extended by HRTPO to all parties required by the Virginia Regulation for Transportation Conformity, which reflects EPA conformity requirements. The requisite parties for IACC include the MPO, VDOT, Virginia Department of Rail and Public Transportation (VDRPT), FHWA, Federal Transit Administration (FTA), Lead (Air Quality) Planning Organization (LPO), VDEQ and EPA.⁴¹ The LPO for Hampton Roads is the Hampton Roads Air Quality Committee (HRAQC), who by these procedures may be represented in IACC by the representative(s) for VDEQ.

Parties to IACC for Hampton Roads therefore will typically include TTAC members as well as the additional parties required by regulation that are not formal members of TTAC, e.g., EPA and VDEQ. If the HRTPO Board provides the venue for IACC, then the HRTPO Board members (not TTAC members) would serve as the parties for IACC along with the additional parties (EPA and VDEQ) required by conformity regulations.

³⁸ IACC is generally focused on the applicable conformity criteria and how they are met in an RCA, and is not to be confused with voting by TTAC and the HRTPO Board in the approval process for the draft RCA itself. The additional parties to IACC (EPA and VDEQ) are therefore not included in voting by TTAC and the HRTPO Board in any actions to recommend to approve or approve the draft RCA. Only official TTAC and HRTPO Board members vote on these respective actions and do so consistent with the procedures and bylaws established by the MPO for these respective committees.

³⁹ TTAC or its successor should HRTPO re-organize its committees and/or change their names in the future.

⁴⁰ TTAC Bylaws: https://www.hrtpo.org/uploads/docs/TTAC_Bylaws.pdf

HRTPO Bylaws: <https://www.hrtpo.org/uploads/docs/HRTPO%20Bylaws%20-%20Amended%2007.21.22.pdf>

⁴¹ See 9 VAC 5-151-70(c)(1): "Representatives of the MPOs, VDOT, VDRPT, FHWA, and FTA shall undertake an interagency consultation process, in accordance with subdivisions 1 and 3 of this subsection and subsection D of this section, with the LPOs, DEQ and EPA on the development of implementation plans, transportation plans, TIPs, any revisions to the preceding documents, and associated conformity determinations." <https://law.lis.virginia.gov/admincode/title9/agency5/chapter151/section70/>

4.0 GUIDING PRINCIPLES FOR CONSULTATION FOR CONFORMITY

Additionally, by these IACC procedures, lack of participation in IACC by one or more of the invited representatives of these additional parties (i.e., those that are not already members of the HRTPO standing committee) does not diminish or invalidate the IACC conducted in any way.

4.6 Concurrent Consultation for Conformity and Planning & Programming

To streamline the conformity process, consultation for conformity may be conducted concurrently or overlapping to the extent feasible with that for planning and programming. This includes IACC and public review on the draft RCA as well as any consultation conducted for planning and/or programming purposes on the proposed amendment(s) or update(s) including consultation on the project list and associated documentation of fiscal constraint.

4.7 Restarting or Pausing the Conformity Process

HRTPO, at its discretion, may on occasion restart or pause the conformity process. For example, if the draft RCA including the conformity project list is revised with a “late” change after the consultation period for public review and/or IACC on the draft RCA have been initiated for the original proposed amendment(s) or update(s), then HRTPO and VDOT may at their discretion restart the conformity process depending on whether they assess the change(s) to be material or not, i.e., whether or not the changes would affect the determination that the applicable conformity criteria (fiscal constraint and consultation under SC II) would be met. Alternatively, HRTPO may simply pause the conformity process until any questions are resolved.

4.8 Conformity Documentation

Options are provided below for conformity documentation, including draft and final RCAs and TTAC and HRTPO agenda items. Other options may be developed by HRTPO and VDOT at their discretion.

4.8.1 Regional Conformity Assessments (RCAs)

An RCA is the documentation used to demonstrate conformity for both amendments and updates to the transportation plan and/or TIP. It may be streamlined to the extent feasible at the discretion of HRTPO and VDOT as long as it summarizes the conformity process and shows that the applicable conformity criteria (fiscal constraint and consultation under SC II) have been met for all proposed amendment(s) and update(s).⁴² It may also be based on a standard template to facilitate not only its preparation but also the review and approval processes (MPO and federal). In practice, the following approaches are typically used for amendments and updates:

⁴² Note a single RCA typically covers all amendments and updates being proposed at the same time.

4.0 GUIDING PRINCIPLES FOR CONSULTATION FOR CONFORMITY

- **Amendments (RCA in Letter Format):** A streamlined approach to documentation is used for amendments, e.g., an RCA in the form of a concise HRTPO letter with attachments. It may simply incorporate conformity information provided in TTAC and HRTPO Board agenda items to document that the applicable conformity criteria (fiscal constraint and consultation under SC II) have been met. Attachments or resource links may be used to provide additional detail, e.g., the consultation record.
- **Updates (RCA in Report Format):** A more detailed approach is used for plan and program updates, e.g., an RCA in the form of a report with separate appendices for the consultation record and conformity project list for the updated plan and program. For example, the template RCA report developed by FHWA for areas nationwide that were affected by the SC II decision may be modified and/or streamlined as appropriate for Hampton Roads.

4.8.1.1 Fiscal Constraint Documentation

HRTPO takes the lead (in consultation and coordination with VDOT as appropriate) in documenting fiscal constraint.⁴³ The RCA should include the following or similar statements and provide or reference supporting information (e.g., citations with links) as appropriate:

Statement on Fiscal Constraint for Amendments:

- The amended plan and program may reasonably be expected to be fiscally-constrained as:
 - The proposed amendment(s) are fiscally-constrained and therefore fiscal constraint for the existing plan and program may reasonably be expected to be unaffected by the change(s),
 - The existing plan and program are fiscally-constrained as required by 40 CFR 93.108,⁴⁴ and
 - Revenue sources for the existing plan and program have not been lost or significantly reduced per 23 CFR 450.324(f)(11)(viii) and 450.326(l).⁴⁵

Statement on Fiscal Constraint for Updates:

- The updated plan and program are fiscally-constrained as required by 40 CFR 93.108.

⁴³ As financial planning including fiscal constraint is required in the federal planning rule, fiscal constraint documentation and the associated project list are typically subjected by HRTPO to extensive public and interagency consultation to meet planning rule requirements before conformity is even initiated. The draft RCA therefore references the documentation of fiscal constraint provided with the plan and program rather than create new or separate documentation. Note the public review and inter-agency consultation conducted on fiscal constraint for conformity purposes subsequent or in addition to the extensive consultation already held for planning and programming purposes is effectively duplicative. See:

- Metropolitan Plans: §450.324(f)(11) https://www.ecfr.gov/cgi-bin/text-idx?SID=c4dd0e323106e9037589cc70a5402cd9&mc=true&node=se23.1.450_1324&rgn=div8
- Programs: §450.326(j)-(k) https://www.ecfr.gov/cgi-bin/text-idx?SID=c4dd0e323106e9037589cc70a5402cd9&mc=true&node=se23.1.450_1326&rgn=div8

⁴⁴ <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-93#93.108>

⁴⁵ If a revenue source is lost or reduced for the plan and/or program, a proposed amendment may require re-assessment of fiscal constraint for the entire plan and program per the federal planning rule. See the planning rule requirements at: *Plan:* 23 CFR §450.324(f)(11)(viii), *and Program:* 23 CFR §450.326(l).

4.0 GUIDING PRINCIPLES FOR CONSULTATION FOR CONFORMITY

4.8.1.2 Consultation Record

The consultation record for amendments may be streamlined relative to that for updates. More specifically:

- **Amendments:** The consultation record for amendments typically includes a list of consultation activities (IACC and public review) and the results of those activities. Links are provided as well to any related online documentation, e.g., HRTPO agenda items at which consultation was conducted. As the RCA for amendments is typically in letter format, the consultation record may be included in the letter or be provided as an attachment to it.
- **Updates:** A comprehensive record of all consultation activities (IACC and public review) and results is typically provided as an appendix to the RCA. It typically includes a conformity schedule that lists milestones in the conformity process as well as consultation activities, key notices, web postings (e.g., public review notice), TTAC and HRTPO Board agenda items relating to conformity, presentations (if any), and excerpts from TTAC and/or HRTPO minutes for the agenda items for the proposed amendment(s) and update(s) if available.

In general, for both amendments and updates:

- Any comments received and responses for both IACC and public review should be included in the consultation record. If no comments are received, then that should specifically be noted.
- The consultation record may list planned consultation activities and dates if the consultation process is incomplete, e.g., if consultation is being initiated at or about the same time as the release of the draft RCA. The results of consultation (including any comments and responses) may then be added to the record as the consultation is completed, building towards a complete record for the final RCA.

4.8.1.3 Conformity Project List

The conformity project list includes all regionally significant projects⁴⁶ in the region that are required to be specified in the HRTPO plan and program. Projects that are not regionally significant may also be listed as such for purposes of transparency. Conversely, projects that are not part of the fiscally-constrained plan and program for the region are excluded.

⁴⁶ The definition provided in the Virginia Regulation for Transportation Conformity at 9 VAC5-151-10, which reflects the EPA conformity rule definition at 40 CFR 93.101, is: "*Regionally significant project*" means a transportation project (other than an exempt project) that is on a facility that serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel. See:

Virginia Regulation: <https://law.lis.virginia.gov/admincode/title9/agency5/chapter151/section10/>
EPA Rule: <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-93#93.101>

4.0 GUIDING PRINCIPLES FOR CONSULTATION FOR CONFORMITY

HRTPO takes the lead (in consultation and cooperation with VDOT as appropriate) in the development of the conformity project list for the plan and program, which supports not only documentation of fiscal constraint but also project implementation in the region.⁴⁷ For updates, the list is typically attached as an appendix to the RCA and/or posted online with a link provided in the RCA.⁴⁸ For amendments, inclusion of the conformity project list with the RCA is optional.

Note the development of the list is a planning and programming activity and as such is typically completed before the conformity process is initiated.

4.8.2 TTAC and HRTPO Board Agenda Items

Agenda items differ in content depending on the specifics of the proposed amendment(s) or update(s). Typically:

- Exempt projects: The agenda items document the basis for the proposed exemption.
- Non-exempt projects that are not regionally significant: The agenda item(s) serve as conformity documentation in place of a separate RCA.
- Non-exempt projects that are regionally significant: The applicable agenda item(s) note that a draft RCA will be developed following HRTPO Board approval of the proposed amendments and use the documentation provided with the agenda items that the applicable conformity criteria (fiscal constraint and consultation under SC II) have been met. As an option, the draft RCA may be prepared at the start of the conformity process, in which case the agenda items would reference the draft RCA and provide a link to a copy posted on the HRTPO website.
- Plan and/or Program Updates: The applicable agenda item(s) reference the draft RCA and provide a link to a copy posted on the HRTPO website.

Note, for both amendments and updates, a separate agenda item for IACC is not required, e.g., if IACC by email is used. However, if HRTPO elects to conduct IACC as a separate agenda item, then the conformity documentation in the agenda item(s) for the proposed amendment(s) or update(s) may be transferred or copied to that item as appropriate.

⁴⁷ The project list is not a federal conformity criterion but is useful “post-conformity” to support project implementation. Per the conformity rule at [40 CFR 93.114](#) and [93.115](#), there must be a currently conforming transportation plan and program at the time of project approval, and the project must come from a conforming plan and program. The conformity project list serves as a good source for National Environmental Policy Act (NEPA) documentation that a given project proposed for implementation is part of a conforming MPO plan and program.

⁴⁸ An online version may help both to streamline maintenance of the table and increase accessibility and transparency. It may also include link(s) to associated fiscal constraint documentation.

5.0 CONFORMITY PROCEDURES FOR HAMPTON ROADS

Consultation procedures that apply for all amendments and updates are specified in this section.⁴⁹ HRTPO is the lead agency for all actions unless specified otherwise. These procedures are based on the principles outlined in the preceding section and may be modified at HRTPO discretion consistent with those principles.

5.1 General Consultation Procedures

Consultation is required under the Virginia Regulation for Transportation Conformity at 9 VAC 5-151-70 (which reflects the federal requirements at 40 CFR 93.105) and includes both IACC and public review. The options presented here for consultation are consistent with the focus on streamlining under SC II as noted above. HRTPO and VDOT may at their discretion take any approach to consultation that is consistent with regulatory requirements including but not limited to the options identified here.

5.1.1 Initiation of Consultation

HRTPO has flexibility on when to start consultation as long as it is completed before HRTPO Board approval of the conformity assessment provided or referenced (e.g., a draft RCA) in the agenda item(s) for the proposed amendment(s) or update(s). It may for example initiate IACC by email and (consistent with HRTPO PPP requirements⁵⁰) public review early enough so that they can be completed before the TTAC meeting and have the results of the consultation reported with the agenda item(s) for the proposed amendment(s) or update(s).

5.1.2 IACC

5.1.2.1 IACC by Email

In this approach, HRTPO emails all IACC parties to advise them that a conformity assessment is being initiated for the proposed amendment(s) and/or update(s) and specify a deadline for comments.⁵¹ The IACC email may be sent, for example, the week before the release of the TTAC agenda to allow time for responses to be received and incorporated into the respective TTAC agenda item(s) before the agenda is released.⁵² The draft RCA (if available) is posted on the HRTPO website with a link provided in the email and/or provided as an attachment.

- The TTAC agenda item(s) note that IACC is being conducted by email and the deadline for comments.
- Any comments received by the deadline and any subsequent responses may then be noted with the TTAC agenda item (if available in time) and the HRTPO agenda item, and added to the RCA consultation record.

⁴⁹ Note administrative modifications do not require conformity determinations per the planning rule at 23 CFR §450.104. Any consultation requirements for administrative modifications are therefore as specified in the planning rule and not in these IACC procedures.

⁵⁰ The HRTPO Public Participation Plan specifies requirements for public review, including time periods. See: <https://www.hrtpo.org/page/public-participation-plan/>

⁵¹ Note only one IACC email is needed to cover all amendments or updates if there are more than one.

⁵² In this case, the deadline may be set to the Monday of the week that the TTAC agenda is released (which is typically on Wednesdays) to allow time for the comments and responses if any to be included with the respective agenda item(s).

5.0 CONFORMITY PROCEDURES FOR HAMPTON ROADS

Note a separate agenda item for IACC at TTAC is not required if IACC is done by email or other means.

5.1.2.2 IACC via TTAC Agenda Item(s)

IACC via TTAC agenda items may be conducted either on conformity documentation provided or referenced in the agenda item(s) for the proposed amendment(s) or update(s) or in a separate agenda item for IACC. Non-TTAC members that may not typically participate in TTAC meetings (e.g., EPA and VDEQ) will be given the option to participate via email, participate remotely, and at their discretion may elect to also observe the meeting as available online.

5.1.2.2.1 IACC via TTAC Agenda Items for the Proposed Amendment(s) or Update(s)

In this approach, IACC is conducted on the conformity documentation either provided directly in the agenda item(s) for the proposed amendment(s) or update(s) or in a draft RCA for which a link is provided. A separate agenda item for IACC is not required. Comments are requested on the draft RCA from all parties to IACC attending or otherwise participating in the meeting. If a draft RCA is not yet available, IACC may be conducted on the HRTPO documentation for the applicable conformity criteria (i.e., fiscal constraint and consultation under SC II) as provided in the agenda item(s) alone. Any comments received and any subsequent responses may be noted with the HRTPO Board agenda item and in the consultation record in the RCA.

5.1.2.2.2 IACC via a Separate Agenda Item at TTAC

IACC as a separate agenda item may be selected in certain cases, e.g., if there are comments to be addressed on fiscal constraint that cover multiple proposed amendments that require extended discussion. In these cases, the conformity documentation that would have been provided with the agenda item(s) for the proposed amendment(s) and update(s) may be transferred to an IACC agenda item in whole or in part at HRTPO discretion. Any comments received and any responses may be noted with the HRTPO Board agenda item and in the consultation record in the RCA.

5.0 CONFORMITY PROCEDURES FOR HAMPTON ROADS

5.1.3 Public Review

Public consultation requirements are specified in the Virginia Regulation for Transportation Conformity at 9 VAC 5-151-70(F).⁵³ Additional requirements specified in the federal conformity rule at 40 CFR 93.105(e)⁵⁴ (via a reference to requirements in 23 CFR 450.316(a)⁵⁵ for the development of a public participation plan) are met in the HRTPO Public Participation Plan (PPP).⁵⁶ The following approach for public review may typically be taken consistent with the requirements of both the Virginia conformity regulation and the HRTPO PPP:

- HRTPO posts a public notice on their website to advise of the upcoming conformity assessment and provide a link to the TTAC agenda and (for updates) the draft RCA. It also specifies a deadline for comments and provides direction on how to submit comments. For amendments for which a draft RCA or letter is available, a link may similarly be provided in the public notice.
- HRTPO may also provide opportunities for public comment at the start of each TTAC and HRTPO Board meeting. If public comments are made relating to conformity of proposed amendment(s) or update(s), then those comments and any responses may be added to the consultation record for the RCA as appropriate.
- Any public comments received and responses provided are added to the consultation record and, as feasible and appropriate, may also be added to the respective TTAC and HRTPO agenda items for the proposed amendment(s) or update(s) for consideration before the approval of the draft RCA by the HRTPO Board. Any public comments made at or by the HRTPO Board meeting before the approval of the draft RCA may also be added to the final RCA along with responses as appropriate.

Note these procedures do not set a minimum time period for public review. A minimum time period for public review for conformity is typically specified in the HRTPO Public Participation Plan, which will govern when applicable.

⁵³ VA Conformity SIP Consultation Requirements. <https://law.lis.virginia.gov/admincode/title9/agency5/chapter151/section70/>

⁵⁴ See: <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-93#93.105>

⁵⁵ See: [https://www.ecfr.gov/current/title-23/section-450.316#p-450.316\(a\)](https://www.ecfr.gov/current/title-23/section-450.316#p-450.316(a))

⁵⁶ The HRTPO Public Participation Plan specifies requirements for public review, including time periods. See: <https://www.hrtpo.org/page/public-participation-plan/>

5.0 CONFORMITY PROCEDURES FOR HAMPTON ROADS

5.2 Amendments for Exempt Projects

Per the EPA conformity rule at 40 CFR 93.126, "... highway and transit projects of the types listed in table 2 of this section are exempt from the requirement to determine conformity." Figure 2 presents the table of exempt projects from the most recent EPA compilation of conformity regulations.⁵⁷ The conformity process for exempt projects is simpler than that for non-exempt amendments and updates as the documentation requirements are reduced and a finding of conformity from FHWA/FTA is not required.

SCREENING: HRTPO staff screen all proposed amendments to the plan and/or program to determine if they are consistent with one or more of the exempt categories listed in Table 2 of the EPA transportation conformity rule at 40 CFR 93.126. Note the exemptions are not limited to "Air Quality" but also include categories for "Safety," "Mass Transit" and "Other."

DOCUMENTATION: HRTPO documents the basis for the proposed exemption(s) in the TTAC and HRTPO Board agenda item(s) for each project included in the proposed amendment(s) by reference to the applicable category in 40 CFR 93.126. For example, for a project that addresses safety issues, the agenda item would note that it is exempt under 40 CFR 93.126, Table 2, "*Safety - Projects that correct, improve, or eliminate a hazardous location or feature*" and as such a conformity determination is not required.

CONSULTATION PROCESS: Consultation *for conformity purposes* is not required for proposed amendments for exempt projects as conformity determinations are not required for projects in this category per 40 CFR 93.126 and no additional consultation requirements are imposed by these procedures. HRTPO may however choose to consult with all parties to IACC to resolve any questions on *whether* a proposed amendment qualifies as exempt. Additionally:

- As consultation is still conducted for planning and programming purposes on all proposed amendments including those for exempt projects, if any comments related to conformity are received on a proposed amendment for an exempt project, then the comments and responses may be documented as appropriate in the TTAC minutes and the corresponding HRTPO Board agenda item.
- Any comments received on a proposed amendment for an exempt project that are not directly related to conformity or the proposed exempt status of the amendment(s) do not require documentation or a response *for conformity purposes*, although they may be addressed by HRTPO for planning and programming purposes as appropriate.

⁵⁷ Excerpted from "Transportation Conformity Regulations as of April 2012", EPA-420-B-12-013, April 2012. See: <https://www.epa.gov/state-and-local-transportation/current-law-regulations-and-guidance-state-and-local-transportation>

Figure 2: Exempt Projects as Specified in Table 2 of the EPA Transportation Conformity Rule

TABLE 2—EXEMPT PROJECTS	
Safety	
<p>Railroad/highway crossing.</p> <p>Projects that correct, improve, or eliminate a hazardous location or feature.</p> <p>Safer non-Federal-aid system roads.</p> <p>Shoulder improvements.</p> <p>Increasing sight distance.</p> <p>Highway Safety Improvement Program implementation.</p> <p>Traffic control devices and operating assistance other than signalization projects.</p> <p>Railroad/highway crossing warning devices.</p> <p>Guardrails, median barriers, crash cushions.</p> <p>Pavement resurfacing and/or rehabilitation.</p> <p>Pavement marking.</p> <p>Emergency relief (23 U.S.C. 125).</p> <p>Fencing.</p> <p>Skid treatments.</p> <p>Safety roadside rest areas.</p> <p>Adding medians.</p> <p>Truck climbing lanes outside the urbanized area.</p> <p>Lighting improvements.</p> <p>Widening narrow pavements or reconstructing bridges (no additional travel lanes).</p> <p>Emergency truck pullovers.</p>	
Mass Transit	
<p>Operating assistance to transit agencies.</p> <p>Purchase of support vehicles.</p> <p>Rehabilitation of transit vehicle 1.</p> <p>Purchase of office, shop, and operating equipment for existing facilities.</p> <p>Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).</p> <p>Construction or renovation of power, signal, and communications systems.</p> <p>Construction of small passenger shelters and information kiosks.</p> <p>Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).</p> <p>Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.</p> <p>Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet.¹</p> <p>Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771.</p>	
Air Quality	
<p>Continuation of ride-sharing and van-pooling promotion activities at current levels.</p> <p>Bicycle and pedestrian facilities.</p>	
Other	
<p>Specific activities which do not involve or lead directly to construction, such as:</p> <p>Planning and technical studies.</p> <p>Grants for training and research programs.</p> <p>Planning activities conducted pursuant to titles 23 and 49 U.S.C.</p> <p>Federal-aid systems revisions.</p> <p>Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.</p> <p>Noise attenuation.</p> <p>Emergency or hardship advance land acquisitions (23 CFR 710.503).</p> <p>Acquisition of scenic easements.</p> <p>Plantings, landscaping, etc.</p> <p>Sign removal.</p> <p>Directional and informational signs.</p> <p>Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).</p> <p>Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.</p>	
<p>Note: ¹ In PM10 and PM2.5 nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.</p>	

Source: Text excerpted from *“Transportation Conformity Regulations as of April 2012,”* EPA-420-B-12-013, April 2012. See:
<https://www.epa.gov/state-and-local-transportation/current-law-regulations-and-guidance-state-and-local-transportation>
 To check for updates, see: <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-93#93.126>

5.0 CONFORMITY PROCEDURES FOR HAMPTON ROADS

5.3 Amendments for Non-Exempt Projects

5.3.1 Amendments for Projects that are Not Regionally Significant

PROGRAMMATIC FINDING: With approval of these procedures by the HRTPO Board, FHWA/FTA in consultation with EPA as appropriate provides approval (a programmatic finding of conformity) for all amendments for non-exempt projects that are not-regionally significant by the definition provided in the Virginia conformity regulation at 9VAC5-151-10 (which reflects the definition in EPA conformity rule at 40 CFR 93.101) and that meet the applicable fiscal constraint criteria. The level of documentation for processing amendments for these projects is similar to those specified for exempt projects.

SCREENING: HRTPO staff screen all proposed non-exempt amendments to the plan and/or program to determine if the projects involved would be regionally significant or not. For projects that are not regionally significant, and so may qualify for the programmatic finding, the following fiscal constraint requirements shall be met before the programmatic finding may be applied for these projects.

Fiscal Constraint Criteria for Amendments:

- The proposed amendment(s) are fiscally-constrained and therefore fiscal constraint for the existing plan and program may reasonably be expected to be unaffected by the change(s),
- The existing plan and program are fiscally-constrained per 40 CFR 93.108, and
- Revenue sources for the existing plan and program have not been lost or significantly reduced per 23 CFR 450.324(f)(11)(viii) and 450.326(l).

DOCUMENTATION: For each qualifying project, HRTPO will document in the respective TTAC and/or HRTPO Board agenda item that it is not regionally significant, the fiscal constraint criteria have been met, the bases for those determinations, and the determination that the project therefore qualifies for a programmatic finding of conformity from FHWA/FTA as specified in these procedures.

For example, for a project on a local facility that would not typically be included in the regional travel demand network model, the agenda item would note that:

- The project is not considered regionally significant by the definition provided in the Virginia Regulation for Transportation Conformity at 9VAC5-151-10 (which reflects the definition in the EPA conformity rule at 40 CFR 93.101) as it is on a local facility that would not normally be included in the modeling of region's transportation network.

5.0 CONFORMITY PROCEDURES FOR HAMPTON ROADS

- The applicable fiscal constraint criteria have been met:
 - The proposed amendment(s) are fiscally-constrained and therefore fiscal constraint for the existing plan and program may reasonably be expected to be unaffected by the change(s),
 - The existing plan and program are fiscally-constrained per 40 CFR 93.108, and
 - Revenue sources for the existing plan and program have not been lost or significantly reduced per 23 CFR 450.324(f)(11)(viii) and 450.326(l).
 - The amended plan and program therefore may reasonably be expected to be fiscally-constrained.
- The project(s) therefore qualify for a programmatic finding of conformity from FHWA/FTA as specified in these procedures (*cite*). A link may also be provided to these procedures posted on the HRTPO website.

CONSULTATION PROCESS: IACC and public review are conducted for all non-exempt amendments. For projects that are not regionally significant, IACC and public review may be streamlined to the extent feasible, e.g., IACC overlapping with the public review period.

5.3.2 Amendments for Regionally Significant Projects

All proposed amendments for non-exempt projects to the plan and/or program require conformity findings from FHWA/FTA, which they base on their review of the MPO-approved RCAs. The procedures specified here for conformity consultation and the preparation of RCAs are flexible and may be modified at the discretion of HRTPO and VDOT as long as the overall regulatory requirements are met, i.e., the applicable conformity criteria are met (fiscal constraint and consultation under SC II) and the process and results are appropriately documented in an RCA.

SCREENING: HRTPO screens proposed amendment(s) for non-exempt projects to the plan and/or program to determine if the screening criteria listed below are met before initiating a conformity assessment.

Fiscal Constraint Criteria for Amendments:

- The proposed amendment(s) are fiscally-constrained and therefore fiscal constraint for the existing plan and program may reasonably be expected to be unaffected by the change(s),
- The existing plan and program are fiscally-constrained per 40 CFR 93.108, and
- Revenue sources for the existing plan and program have not been lost or significantly reduced per 23 CFR 450.324(f)(11)(viii) and 450.326(l).

5.0 CONFORMITY PROCEDURES FOR HAMPTON ROADS

DOCUMENTATION: The RCA may be streamlined to the extent feasible consistent with all applicable regulatory requirements and may take the form of an HRTPO letter to the FHWA Virginia Division Office (copied to VDOT Environmental and VDOT Hampton Roads District) with attachments.⁵⁸ It may be prepared after HRTPO Board approval of the proposed amendment(s) and serves to both document that approval and its basis, i.e., that the applicable conformity criteria (fiscal constraint and consultation under SC II) have been met. For this purpose, it would cite documentation on fiscal constraint and consultation provided in the TTAC and HRTPO Board agenda items for the proposed amendment(s) and include attachments to provide additional information as needed, e.g., a streamlined consultation record and, as an option, the amended conformity project list.

The documentation in the TTAC and HRTPO agenda items and the RCA would also include the following or similar statements:

- The applicable fiscal constraint criterion has been met:
 - The proposed amendment(s) are fiscally-constrained and therefore fiscal constraint for the existing plan and program may reasonably be expected to be unaffected by the change(s),
 - The existing plan and program are fiscally-constrained per 40 CFR 93.108, and
 - Revenue sources for the existing plan and program have not been lost or significantly reduced per 23 CFR 450.324(f)(11)(viii) and 450.326(l).
- The amended plan and program therefore may reasonably be expected to remain fiscally-constrained.
- Consultation with all applicable federal, state and local requirements has been (or will be) conducted, including both IACC and public review. *<Provide supporting information as appropriate, summarizing both the consultation activities and results including any comments and responses. If no comments were received, that should specifically be stated.>*

CONSULTATION PROCESS: IACC and public review are conducted for all amendments involving regionally significant projects. The approach may be selected at the discretion of HRTPO and VDOT and be streamlined to the extent feasible, e.g., IACC overlapping with the public review period. Note, as the RCA would typically be prepared after HRTPO Board approval of the proposed amendment(s), consultation in these cases would be limited to the information provided in the TTAC and HRTPO agenda items, which therefore must document how the applicable conformity criteria (fiscal constraint and consultation under SC II) have been met.

⁵⁸ Other options may be selected at HRTPO & VDOT discretion, e.g., a draft RCA prepared at the start of the conformity process, in which case consultation would be on the draft RCA instead of the conformity information provided with the TTAC and HRTPO agenda items. An additional option would be to prepare a detailed RCA as typically done for updates instead of a letter with attachments.

5.0 CONFORMITY PROCEDURES FOR HAMPTON ROADS

5.4 Updates to the Plan and/or Program

All proposed updates to the plan and/or program require conformity findings from FHWA/FTA, which are based on their review of the MPO-approved RCAs. The procedures specified here for conformity consultation and the preparation of RCAs are flexible and may be modified at the discretion of HRTPO and VDOT as long as the overall regulatory requirements are met, i.e., the applicable conformity criteria are met (fiscal constraint and consultation under SC II) and the process and results are appropriately documented in the RCA.

SCREENING: HRTPO screens proposed update(s) to the plan and/or program to determine if they are fiscally-constrained per 40 CFR 93.108.

DOCUMENTATION: For plan and program updates, a detailed RCA with appendices is typically provided, with separate appendices for the consultation record and the conformity project list.

CONSULTATION PROCESS: IACC and public review are conducted for all plan and/or program updates for regionally significant projects. The approach may be selected at the discretion of HRTPO and VDOT and may be streamlined to the extent feasible, e.g., IACC overlapping with the public review period.

5.5 Approval Processes

5.5.1 HRTPO Review and Approval

The typical process is for TTAC to recommend approval and the HRTPO Board to approve all proposed amendment(s) and update(s) and associated conformity documentation/RCAs. The approval processes for amendments and updates are similar but differ with respect to the timing of the preparation of the draft RCA, as outlined below.

If consultation is not completed until after the TTAC meeting, then the TTAC recommendation for HRTPO Board approval for conformity may be conditional, i.e., subject to no unresolved adverse comments being received in the remainder of the consultation period. While IACC is typically completed by the date of the TTAC meeting, the public review period may extend past that date (as long as it is completed before HRTPO Board approval) and so require a conditional recommendation to approve by TTAC. In contrast, HRTPO Board approval will not be conditional on completion of the public review process but must be completed with any substantive comments and responses provided to the HRTPO Board before their approval.

5.0 CONFORMITY PROCEDURES FOR HAMPTON ROADS

5.5.1.1 Approval Process for Amendments for Regionally Significant Projects

These procedures apply for cases in which the draft RCA is prepared after HRTPO Board approval of the proposed amendment(s) and conformity documentation.

TTAC:

- Recommends HRTPO Board approval of the proposed amendment(s) and associated conformity documentation as provided in the agenda item(s) for the amendment(s), considering any comments received in consultation and any responses available at the time of the meeting. The recommendation to approve may be conditional on no unresolved adverse comments being received in the remainder of the consultation period if it has not been completed by the time of the TTAC meeting (although it must be completed before HRTPO approval).
- If scheduling precludes TTAC review and recommendation for Board approval, then these items may proceed directly to the HRTPO Board for approval. This may require any consultation that would have taken place at or before TTAC to be held at or before the HRTPO Board meeting instead.

HRTPO Board:

- Approves the proposed amendment(s) and associated conformity documentation. The approvals may be placed on the consent agenda as a routine regulatory compliance item.
- Authorizes HRTPO staff to prepare an RCA and forward it to FHWA/FTA to initiate the federal review and approval process. The RCA summarizes the conformity information provided in the TTAC and HRTPO Board agenda items to demonstrate that the applicable criteria (fiscal constraint and consultation under SC II) have been met, and documents the approval by the HRTPO Board. This authorization may also be placed on the consent agenda as a routine regulatory compliance item.
- HRTPO posts the final RCA on their website and sends an email notice to all parties to IACC to provide the link to the final RCA, consistent with requirements of the Virginia regulation for transportation conformity to provide such notice.⁵⁹

The approval process for plan and program updates may also be applied for regionally significant amendments if a draft RCA is developed at the start of the conformity process, e.g., before the TTAC meeting.

⁵⁹ The Virginia regulation for transportation conformity requires at 9 VAC 5-151-70(C)(1)(b) that the lead agency "... provide final documents and supporting information to each agency after approval or adoption." HRTPO typically advises all parties to IACC by email of HRTPO Board approval of the RCA and provides a link to the final RCA on its website. A similar email notice is provided for approval (via the programmatic finding) of amendments for projects that are not regionally significant. Alternatively, at the discretion of the HRTPO, the requisite notice may be provided with their next TTAC and/or HRTPO agenda as long as a notice is sent to all IACC parties. See: <https://law.lis.virginia.gov/admincode/title9/agency5/chapter151/section70/>

5.0 CONFORMITY PROCEDURES FOR HAMPTON ROADS

5.5.1.2 Approval Process for Plan and/or Program Updates

These procedures apply in cases in which the draft RCA is prepared at the start of the conformity process.

TTAC:

- Recommends HRTPO Board approval of the draft RCA, considering any comments received in consultation and any responses available at the time of the meeting.⁶⁰ The recommendation to approve may be conditional on no unresolved adverse comments being received in the remainder of the consultation period if it has not been completed by the time of the TTAC meeting (although it must be completed before HRTPO approval)."
- If scheduling precludes the inclusion of the proposed amendment(s) and associated RCA on the TTAC agenda, then these items may proceed to the HRTPO Board for approval without the TTAC recommendation to approve. This may require any consultation that would have taken place at or before TTAC to be held at or before the HRTPO Board meeting instead.

HRTPO Board:

- Approves the proposed update(s) and the draft RCA. The approvals may be placed on the consent agenda as a routine regulatory compliance item.
- HRTPO staff document the Board approval and the basis (i.e., that all applicable conformity criteria under SC II have been met) with a cover letter that can be transmitted with the final RCA to FHWA to initiate the federal review and approval process without delay.
- HRTPO posts the final RCA on their website and sends an email notice to all parties to IACC to provide the link to final RCA, consistent with requirements of the Virginia regulation for transportation conformity to provide such notice.

⁶⁰ Recommendations to approve the proposed amendment(s) or update(s) and associated RCA may be done on the consent agenda if one is provided for TTAC meetings in the future.

5.0 CONFORMITY PROCEDURES FOR HAMPTON ROADS

5.5.2 Federal Review and Approval

HRTPO or VDOT transmit the RCA (typically by email) to FHWA to initiate the federal review and approval process.

5.5.2.1 Expedited Federal Review and Approval

FHWA/FTA approval may take the form of a standard letter providing a finding of conformity that can be issued expeditiously after the HRTPO approval of the draft RCA for all proposed amendment(s) and updates.⁶¹

HRTPO typically also posts the FHWA/FTA finding of conformity (e.g., as an attachment or enclosure in subsequent TTAC and HRTPO Board agendas) when it is received from FHWA/FTA and advises all IACC parties of the finding, consistent with 9 VAC 5-151-70(C)(1)(b).

5.5.2.2 Deferred Federal Approval (Finding of Conformity)

If FHWA/FTA raise material questions with fiscal constraint in advance of the HRTPO Board approval of the proposed amendments, and those questions are not resolved by HRTPO and/or VDOT as appropriate in advance of or at the HRTPO Board meeting, the FHWA/FTA approval (finding of conformity) may be deferred as needed until the identified issue(s) with fiscal constraint are resolved.

Figure 3 provides a general overview of the conformity process. A more detailed flowchart is presented in Appendix C.

⁶¹ A streamlined approach for federal review and approval is feasible under SC II as regional emission analyses (modeling requirements) have been eliminated in EPA guidance so the only substantive material remaining for consultation is fiscal constraint, which is generally already subjected to extensive consultation for planning and programming purposes before conformity is even initiated. Therefore, if there are no issues with fiscal constraint that have not already been addressed in advance of or otherwise at the HRTPO Board meeting, then the federal review and approval process for a finding of conformity may be expedited by FHWA/FTA using a standard letter.

Figure 3: Overall Conformity Process for Hampton Roads



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APPENDIX A – REGULATORY COMPLIANCE DOCUMENTATION

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REGULATORY COMPLIANCE DOCUMENTATION

As the Virginia Regulation for Transportation Conformity⁶² at 9 VAC 5-151-70 has been approved by EPA,⁶³ its provisions apply for the Hampton Roads region per the federal transportation conformity rule at 40 CFR 51.390(a).⁶⁴ Accordingly, this appendix documents how the regulatory requirements are met for each of the consultation-related provisions of the Virginia conformity regulation. Note the regulatory text is italicized and shaded, and the responses for meeting the requirements, as applicable, are in plain text.

9VAC5-151-70. Consultation.

A. IAC, Conflict Resolution and Public Consultation

A. The MPOs, LPOs, DEQ, VDOT and VDRPT shall undertake the procedures prescribed in this section for interagency consultation, conflict resolution and public consultation with each other and with local or regional offices of EPA, FHWA, and FTA on the development of control strategy implementation plan revisions, the list of TCMs in the applicable implementation plan, transportation plans, TIPs, and associated conformity determinations required by this chapter.

This document provides the requisite interagency consultation procedures for transportation conformity determinations for the Hampton Roads region. It also provides procedures for public review for conformity that are consistent with those specified in the HRTPO Public Participation Plan. Procedures for conflict resolution related to conformity are as specified in the Virginia Regulation for Transportation Conformity at 9VAC5-151-70(E).

As this document only addresses conformity procedures, it does not provide procedures for the development of SIP revisions (including TCMs), transportation plans or TIPs. This document also does not address the development of TCMs as they were not included in the previously applicable maintenance plan or the second maintenance plan.

B. Conformity SIP Approval & Subdivision D1

B. Until EPA grants approval of this chapter, the MPOs, and VDOT and VDRPT, prior to making conformity determinations, shall provide reasonable opportunity for consultation with LPOs, DEQ and EPA on the issues in subdivision D 1 of this section.

The Virginia Regulation for Transportation Conformity has been approved by EPA as noted above.

⁶² VA Conformity SIP (Reg. for Transportation Conformity): <https://law.lis.virginia.gov/admincode/title9/agency5/chapter151/>
Consultation Requirements: <https://law.lis.virginia.gov/admincode/title9/agency5/chapter151/section70/>

⁶³ See: <https://www.govinfo.gov/content/pkg/FR-2018-02-22/pdf/2018-03524.pdf>
<https://www.govinfo.gov/content/pkg/FR-2019-10-24/pdf/2019-23133.pdf>

⁶⁴ 40 CFR 51.390(a) "...The federal conformity regulations contained in part 93, subpart A, of this chapter would continue to apply for the portion of the requirements that the state did not include in its conformity implementation plan and the portion, if any, of the state's conformity provisions that is not approved by EPA."

<https://ecfr.federalregister.gov/current/title-40/chapter-I/subchapter-C/part-51.390#51.390>

C. General Factors

C. The provisions of this subsection shall be followed with regard to general factors associated with interagency consultation.

1. Representatives of the MPOs, VDOT, VDRPT, FHWA, and FTA shall undertake an interagency consultation process, in accordance with subdivisions 1 and 3 of this subsection and subsection D of this section, with the LPOs, DEQ and EPA on the development of implementation plans, transportation plans, TIPs, any revisions to the preceding documents, and associated conformity determinations.

This document provides the requisite consultation procedures for transportation conformity determinations for the Hampton Roads region. It does not address the development of SIP revisions, transportation plans or TIPs.

a. MPOs, or their designee, shall be the lead agencies responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the transportation plan, the TIP, and any amendments or revisions thereto. In the case of nonmetropolitan areas, VDOT shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the statewide transportation plan, the statewide TIP, and any amendments or revisions thereto. The MPOs shall be the lead agencies responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to any determinations of conformity under this chapter for which the MPO is responsible.

Lead agency roles are specified in Section 3.4. Additionally, this document only addresses consultation procedures for conformity, and not the development of the statewide or metropolitan plans or TIPs.

b. It shall be the affirmative responsibility of the lead agency to initiate the process by notifying other participants, convene meetings, assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner, prepare summaries of consultation meetings, maintain a written record of the consultation process, provide final documents and supporting information to each agency after approval or adoption, and to assure the adequacy of the interagency consultation process with respect to the subject document or decision.

By these procedures, the HRTPO will take the lead in each of the activities listed above, with the exception that, on those occasions that VDOT prepares RCAs for updates, it will take the lead on the specific task of preparing the consultation record to be included in the RCA.

c. Regular consultation on major activities (such as the development of a transportation plan, the development of a TIP, or any determination of conformity on transportation plans or TIPs) shall include meetings beginning on a date determined by the lead agency to be adequate to meet the date a final document is required and continuing at frequency mutually determined by the affected agencies. In addition, technical meetings shall be convened as necessary.

These procedures specify processes for IACC, including those at HRTPO standing committee meetings as well as options for IACC by email, teleconference and other electronic means.

d. Each lead agency in the consultation process shall confer with all other agencies identified under subdivision 1 of this subsection with an interest in the document to be developed, provide all information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, and prior to taking any action, consider the views of each agency and respond to those views in a timely, substantive written manner prior to any final decision on the documents. The views and written responses shall be made part of the record of any decision or action.

HRTPO will take the lead in the above activities.

e. It shall be the responsibility of each agency specified in subdivision 1 of this subsection, when not fulfilling the responsibilities of lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a timely manner, attend consultation and decision meetings, provide input on any area of substantive expertise or responsibility, and provide technical assistance to the lead agency or to the consultation process when requested.

2. Representatives of the LPOs, DEQ, and EPA shall undertake an interagency consultation process, in accordance with this subdivision and subdivision 3 of this subsection, with MPOs, VDOT, VDRPT, FHWA, and FTA on the development of control strategy implementation plan revisions, the list of TCMs in the applicable implementation plan, and any revisions to the preceding documents.

a. The DEQ, in conjunction with the LPOs, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of control strategy implementation plan revisions, the credits associated with the list of TCMs in the applicable implementation plan, and any amendments or revisions thereto.

b. It shall be the affirmative responsibility of the lead agency to initiate the process by notifying other participants, convene meetings, assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner, prepare minutes of consultation meetings, maintain a written record of the consultation process, provide final documents and supporting information to each agency after approval or adoption, and to assure the adequacy of the interagency consultation process with respect to the subject document or decision.

c. Regular consultation on the development of any control strategy implementation plan revision shall include meetings beginning on a date determined by the lead agency to be adequate to meet the date a final document is required and continuing at frequency mutually determined by the affected agencies. In addition, technical meetings shall be convened as necessary.

d. Each lead agency in the consultation process shall confer with all other agencies

identified under subdivision 1 of this subsection with an interest in the document to be developed, provide all information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, and prior to taking any action, consider the views of each agency and respond to those views in a timely, substantive written manner prior to any final decision on the documents. The views and written responses shall be made part of the record of any decision or action.

e. It shall be the responsibility of each agency specified in subdivision 1 of this subsection, when not fulfilling the responsibilities of lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a timely manner, attend consultation and decision meetings, provide input on any area of substantive expertise or responsibility, and provide technical assistance to the lead agency or to the consultation process when requested.

3. The specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:

a. The MPOs shall be responsible for the following:

With the clarifications as provided below.

(1) Developing metropolitan transportation plans and TIPs in accordance with 23 CFR Part 450 and 49 CFR Part 613 and the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (Public Law No. 109-59).⁶⁵

(2) Adopting conformity determinations in conjunction with the adoption of transportation plans and TIPs and any revisions to the documents.

(3) In cooperation with VDOT, with assistance from VDRPT:

(a) Developing conformity assessments and associated documentation.

(b) Evaluating potential TCM projects and impacts.

Not applicable as TCMs are not specified in an applicable SIP for the region.

(c) (i) Developing or approving transportation and related socio-economic data and planning assumptions, or both, and (ii) providing the data and assumptions for use in air quality analysis for implementation plan tracking and conformity of transportation plans, TIPs and projects.

Air quality (regional emissions) analyses are not required for this region under SC II. If they are required in the future, then the HRTPO as appropriate will fulfill these requirements.

⁶⁵ The reference to SAFETEA-LU is taken here to mean all currently applicable requirements specified in federal transportation funding reauthorization bills.

(d) Monitoring regionally significant projects.

(e) Providing technical and policy input into the development of emissions budgets.

Regional emission modeling and motor vehicle emission budget tests are not required under SC II, therefore emission budgets are not required for this region. If emission budgets become applicable for this region in the future, then the HRTPO, and/or VDOT as appropriate, will fulfill this requirement.

(f) Assuring the proper completion of transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs needed for conformity assessments.

Transportation modeling and emission analyses are not required under SC II. If they are required in the future, then the HRTPO with VDOT assistance as appropriate will fulfill these requirements. TCMs are not specified in an applicable SIP for the region so the TCM requirement is not applicable.

(g) Involving the DEQ and LPOs continuously in the process.

(h) Consulting with FHWA and FTA on (i) timely action on final findings of conformity, after consultation with other agencies as provided in this section; and (ii) guidance on conformity and the transportation planning process to agencies in interagency consultation.

(i) Consulting with EPA on (i) review and approval of updated motor vehicle emissions factors, emission inventories and budgets; and (ii) guidance on conformity criteria and procedures to the agencies involved in the interagency consultation process.

HRTPO will consult as appropriate with the LPO, DEQ and EPA on these issues or any SIP revision should the region fall into nonattainment in the future. At the time of preparation of these procedures, the region is in attainment and, under SC II, regional emission modeling and motor vehicle emission budgets are not required.

b. The VDOT, with assistance from the VDRPT, shall be responsible for the following:

With the clarifications as noted below.

(1) Developing statewide transportation plans and statewide TIPs.

(2) Providing demand forecasting and on-road mobile source emission inventories.

HRTPO will lead demand forecasting for the region with support from VDOT as needed.

(3) Circulating draft and final project environmental documents to other agencies.

(4) Convening air quality technical review meetings on specific projects as needed or

when requested by other agencies.

(5) In cooperation with the MPOs:

(a) Developing conformity assessments and associated documentation.

(b) Evaluating potential TCM projects and impacts.

Not applicable as TCMs are not specified in an applicable SIP for the region.

(c) (i) Developing or approving transportation and related planning assumptions, or both, and (ii) providing the data and assumptions for use in air quality analysis for implementation plan tracking and conformity of transportation plans, TIPs and projects.

(d) Monitoring regionally significant projects.

(e) Providing technical and policy input into the development of emissions budgets.

The region is in attainment for all criteria pollutants specified by EPA, and the development of motor vehicle emission budgets is not otherwise required for this region under SC II. If emission budgets are required in the future for this region, then VDOT as appropriate will fulfill this requirement.

(f) Assuring the proper completion of transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs need for conformity assessments.

Transportation modeling and emission analyses are not required for this region under SC II. If they are required in the future, then VDOT as appropriate will conduct the emission modeling and HRTPO the transportation modeling. TCMs are not specified in an applicable SIP for the region so the TCM requirement is not applicable.

(g) Involving the DEQ and LPOs continuously in the process.

(h) Consulting with FHWA and FTA on (i) timely action on final findings of conformity, after consultation with other agencies as provided in this section; and (ii) guidance on conformity and the transportation planning process to agencies in interagency consultation.

VDOT supports timely action on final findings of conformity, and will provide guidance on conformity and the planning process to other agencies as appropriate.

(i) Consulting with EPA on (i) review and approval of updated motor vehicle emissions factors, emission inventories and budgets; and (ii) guidance on conformity criteria and procedures to the agencies involved in the interagency consultation process.

VDOT will consult as appropriate with the LPO, DEQ and EPA on updated motor vehicle emissions factors, emission inventories and budgets should the region fall into nonattainment in the future. At the time of preparation of these procedures, the region is in attainment and these requirements do not apply. VDOT will continue to consult with EPA as appropriate on conformity criteria and procedures to the agencies involved in the interagency consultation process.

c. The LPOs shall be responsible for the following:

- (1) Developing emissions inventories and budgets.*
- (2) Developing control strategy implementation plan revisions and maintenance plans.*
- (3) Providing a staff liaison to the MPOs for conformity and to be responsive to MPO requests for information and technical guidance.*
- (4) Involving the MPOs, VDOT AND VDRPT continuously in the process.*

d. The DEQ shall be responsible for the following:

- (1) Developing emissions inventories and budgets.*
- (2) Tracking attainment of air quality standards, and emission factor model updates.*
- (3) Gaining final approval at state level for control strategy implementation plan revisions and maintenance plans.*
- (4) Providing a staff liaison to the LPOs for conformity and to be responsive to LPO requests for information and technical guidance.*
- (5) Involving the LPOs continuously in the process.*

e. The FHWA and FTA shall be responsible for the following:

- (1) Assuring timely action on final findings of conformity, after consultation with other agencies as provided in this section.*
- (2) Providing guidance on conformity and the transportation planning process to agencies in interagency consultation.*

f. The EPA shall be responsible for the following:

- (1) Reviewing and approving updated motor vehicle emissions factors.*
- (2) Providing guidance on conformity criteria and procedures to agencies in interagency consultation.*
- (3) Assuring timely action on conformity analysis and findings and implementation*

plan revisions.

4. The MPOs, LPOs, DEQ, VDOT and VDRPT may enter into agreements to set forth specific consultation procedures in more detail that are not in conflict with this section.

D. IACC Requirements

D. The provisions of this subsection shall be followed with regard to specific processes associated with interagency consultation.

1. An interagency consultation process involving the MPOs, LPOs, DEQ, VDOT, VDRPT, EPA, FHWA, and FTA shall be undertaken for the following:

This document specifies IACC procedures and processes involving all of the specified parties.

a. Evaluating and choosing each model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emission analyses, including vehicle miles traveled (VMT) forecasting, to be initiated by VDOT, in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

Not applicable under SC II, per EPA guidance.⁶⁶ If regional emission analyses and conformity tests become applicable in the future, these procedures would automatically include IACC for modeling and the conformity tests.

b. Determining which transportation projects should be considered "regionally significant" for the purpose of regional emission analysis (in addition to those functionally classified as principal arterial or higher; or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP, to be initiated by VDOT, in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

Not applicable under SC II, in the absence of regional emission analysis (modeling) requirements. Nevertheless, RCAs may include a fiscally-constrained project list of all projects that may be categorized as regionally significant by the definition provided in the Virginia Regulation for Transportation Conformity at 9-VAC 5- 151-10 which follows the definition provided in the EPA conformity rule at 40 CFR 93.101.

c. Evaluating whether projects otherwise exempted from meeting the requirements of 40 CFR 93.126 and 40 CFR 93.127 should be treated as nonexempt in cases where potential adverse emissions impacts may exist for any reason, to be initiated by VDOT, in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

The list of exempt projects specified in the EPA conformity rule at 40 CFR 93.126 and 40 CFR 93.127 shall be used to determine the exempt status of projects. If there is a question on the

⁶⁶ EPA, "Transportation Conformity Guidance for the South Coast II Court Decision", November 2018, EPA-420-B-18-050. <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100VQME.pdf>

exempt status of a project, then the lead agency (VDOT and/or HRTPO) may conduct IACC on the question before making a decision on the exempt status.

d. Making a determination, as required by 40 CFR 93.113(c)(1), whether past obstacles to implementation of TCMs that are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs, to be initiated by VDOT as lead agency, in consultation with the MPOs and VDRPT, and conducted in accordance with subdivisions C 1 and 3 of this section. This consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures.

Not applicable as TCMs were not specified in either the previously applicable SIP for Hampton Roads or in the second maintenance plan.

e. Notifying all parties to the consultation process of transportation plan or TIP amendments that merely add or delete exempt projects listed in 40 CFR 93.126 or 40 CFR 93.127, to be initiated by VDOT in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

All planning and programming activities are relayed through regularly scheduled TTAC and HRTPO Board meetings, including proposed amendments involving exempt projects. Parties to IACC that are not members of TTAC or the HRTPO Board (e.g., EPA and VDEQ) may be notified by HRTPO by email, e.g., by adding them to the email list for TTAC and HRTPO Board meetings.

f. Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by 40 CFR 93.109(g)(2)(iii), to be initiated by VDOT, in consultation with the MPOs, and in accordance with subdivisions C 1 and 3 of this section.

The Hampton Roads area is not considered an isolated rural nonattainment or maintenance area. Additionally, regional emission analyses and associated budget tests are not required for the region under SC II.

g. Determining what forecast of vehicle miles traveled (VMT) to use in establishing or tracking emissions budgets, developing transportation plans, TIPs, or control strategy implementation plan revisions, or making conformity determinations, to be initiated by VDOT, in consultation with the MPOs, and in accordance with subdivisions C 1 and 3 of this section.

At the time of preparation of these procedures, the region is in attainment of all of the NAAQS established by EPA and modeling is not required for regional conformity analyses. Motor vehicle emission budgets are similarly not required. If the region falls into nonattainment in the future, then VDOT and HRTPO will work together to develop the needed VMT and associated traffic forecasts.

2. An interagency consultation process in accordance with subsection C of this section involving the MPOs, LPOs, DEQ, VDOT, and VDRPT shall be undertaken for the following:

a. Evaluating events that may trigger new conformity determinations in addition to those triggering events established by 40 CFR 93.104, to be initiated by VDOT, in consultation with the MPOs and DEQ, and conducted in accordance with subdivisions C 1 and 3 of this section.

Events additional to those specified in 40 CFR 93.104 are not anticipated in the absence of requirements for regional emission analyses (modeling requirements) under SC II. If such requirements become applicable in the future, then IACC may be conducted to determine the appropriate response.

b. Consulting on emissions analysis for transportation activities that cross the borders of MPOs or nonattainment areas, to be initiated by VDOT in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

Not applicable under SC II, in the absence of modeling requirements. If regional emission analyses and conformity tests become applicable in the future, these procedures would automatically include IACC for such activities.

3. Where the metropolitan planning area does not include the entire nonattainment or maintenance area, an interagency consultation process in accordance with subdivisions C 1 and 3 of this section involving the MPOs and VDOT shall be undertaken for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area, to be initiated by VDOT, in consultation with the MPOs, and in accordance with subdivisions C 1 and 3 of this section.

Not applicable as the Hampton Roads area is in attainment for all of the NAAQS established by EPA. It is only subject to conformity as a result of the SC II court decision. As a matter of record, the metropolitan planning area did not include a portion of Gloucester County that was included in the former maintenance area. That portion of Gloucester County was included in regional emission analyses when they were required in the past and would likewise be included in regional emission analyses should they again become required in the future.

4. To assure that plans for construction of regionally significant projects that are not FHWA or FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including all those by recipients of funds designated under Title 23 USC or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to assure that any changes to those plans are immediately disclosed, an interagency consultation process shall be undertaken, to be initiated by the MPO, in consultation with VDOT, and conducted in accordance with subdivisions C 1 and 3 of this section involving the MPO, VDOT, VDRPT, and recipients of funds designated under Title 23 USC or the Federal Transit Act.

If a regionally significant project is state or locally funded, the project sponsor (i.e., locality, state agency, transit operator, etc.) brings the project forward to the TTAC for inclusion in the regional network and demonstration of fiscal constraint. HRTPO is generally responsible for identifying all

regionally significant projects (federal and non-federal) for inclusion in the TIP and/or LRTP as appropriate.

5. An interagency consultation process in accordance with subsections C 1 and 3 of this section involving the MPOs and other recipients of funds designated under Title 23 USC or the Federal Transit Act shall be undertaken for developing assumptions regarding the location and design concept and scope of projects that are disclosed to the MPO as required by subdivision 4 of this subsection but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of 40 CFR 93.122, to be initiated by the MPO, in consultation with VDOT, and conducted in accordance with subdivisions C 1 and 3 of this section.

Not applicable under SC II, in the absence of regional emission analysis (modeling) requirements. Nevertheless, in support of its regional planning and programming responsibilities, HRTPO identifies non-federal projects that are regionally significant for inclusion in the TIP and/or LRTP as appropriate and works with the project sponsor (i.e. locality, state agency, transit operator, etc.) to ensure that those projects are described in appropriate detail in the TIP and LRTP.

6. An interagency consultation process in accordance with subdivisions C 1 and 3 of this section shall be undertaken for the design, schedule, and funding of research and data collection efforts and model developments in regional transportation (such as household or travel transportation surveys) to be initiated by the MPO, in consultation with VDOT, and conducted in accordance with subdivisions C 1 and 3 of this section.

Not applicable under SC II, in the absence of regional emission analysis (modeling) requirements. Nevertheless, HRTPO continues to maintain the regional network model in support of its regional transportation planning and programming responsibilities.

E. Conflict Resolution

E. The provisions of this subsection shall be followed with regard to conflict resolution associated with interagency consultation.

The conflict resolution procedures specified in this section will be followed as appropriate.

- 1. Unresolved conflicts among state agencies, or between state agencies and the MPO(s), or among MPO member jurisdictions, shall be identified by an MPO or agency in writing to the other MPO, DEQ, VDOT, or VDRPT, with copies to FHWA, FTA and EPA. The MPO's or agency's written notice shall:*
 - a. Explain the nature of the conflict;*
 - b. Review options for resolving the conflict;*
 - c. Describe the MPO's or agency's proposal to resolve the conflict;*
 - d. Explain the consequences of not reaching a resolution; and*
 - e. Request that comments on the matter be received within two weeks.*
- 2. If the above action does not result in a resolution to the conflict, either of the following shall apply:*
 - a. If the conflict is between the MPOs or between the MPO(s) and VDOT or VDRPT or both, then the parties shall follow the coordination procedures of 23 CFR 450.210.*
 - b. If the conflict is between the MPO(s) or VDOT or VDRPT and the DEQ and the conflict cannot be resolved by the affected agency heads, then the DEQ Director may elevate the conflict to the Governor in accordance with the procedures of subdivision 3 of this section. If the DEQ Director does not appeal to the Governor within 14 days as provided in subdivision 3a of this subsection, the MPO or VDOT or VDRPT may proceed with its final conformity determination.*
- 3. Appeals to the Governor by the DEQ Director under the provisions of subdivision 2 b of this subsection shall be in accordance with the following procedures:*
 - a. The DEQ Director has 14 calendar days to appeal to the Governor after the MPO(s) or VDOT or VDRPT has notified the DEQ Director of the agency's or MPO's resolution of DEQ's comments. The notification to the DEQ Director shall be in writing and shall be hand-delivered. The 14-day clock shall commence when VDOT or VDRPT or the MPO has confirmed receipt by the DEQ Director of the agency's or MPO's resolution of the DEQ's comments.*
 - b. The appeal to the Governor shall consist of the following: the conformity determination and any supporting documentation; DEQ's comments on the determination; the MPO(s) or VDOT or VDRPT resolution of DEQ's comments; and DEQ's appeal document.*

c. The DEQ shall provide a complete appeal package to the MPO, VDOT and VDRPT within 24 hours of the time the appeal is filed with the Governor's Office.

d. If the Governor does not concur with the conformity determination, he may direct revision of the applicable implementation plan, revision of the planned program of projects, revision of the conformity analysis or any combination of the preceding.

e. If the Governor concurs with the conformity determination made by the MPO and VDOT, the MPO and VDOT may proceed with the final conformity determination.

f. The Governor may delegate his role in this process, but not to the agency head or staff of DEQ, VDOT or VDRPT or the Commonwealth Board of Transportation.

4. Nothing in this section shall prevent the state agencies and MPOs from making efforts upon their own initiative to obtain mutual conflict resolution through conference or other appropriate means.

F. The provisions of this subsection shall be followed with regard to public consultation.

- 1. The MPOs shall establish a proactive involvement process that provides reasonable opportunity for review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the MPO at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR 450.316(a).*
- 2. The MPOs shall specifically address in writing public comments regarding plans for a regionally significant project, not receiving FHWA or FTA funding or approval, and how the project is properly reflected in the emission analysis supporting a proposed conformity finding for a transportation plan or TIP.*
- 3. The MPOs shall also provide an opportunity for public involvement in conformity determinations for projects where otherwise required by law.*

HRTPO public consultation procedures are specified in the HRTPO Public Participation Plan (PPP), which is subject to periodic updates.⁶⁷ The procedures specified in the HRTPO PPP are followed for public review conducted for conformity purposes.

⁶⁷ See: <https://www.hrtpo.org/page/public-participation-plan/>

APPENDIX B – SAMPLE FORMAT FOR THE CONFORMITY PROJECT LIST

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Figure B-1: Sample Project List for Conformity

HAMPTON ROADS AMENDED 2045 LONG-RANGE TRANSPORTATION PLAN AND
FY 2021-2024 TRANSPORTATION IMPROVEMENT PROGRAM
CONFORMITY PROJECT LIST

2045 Project ID	UPC	Locality	Project Name	From	To	Improvement Type	Existing Lanes	Proposed Lanes	Estimated Opening Year	In FY 21-24 TIP	In 2045 LRTP
Projects Regionally Significant for Conformity											
2045-308	111427	Multi-jurisdictional	Bowers Hill Interchange	N/A	N/A	Interchange modifications and improvements	N/A	N/A	2038	Yes (PE Only)	Yes
2045-109	111427 (UPC is for study)	Multi-jurisdictional	I-664 Widening	Bowers Hill Interchange	College Drive	Extension of HREL Network	4	6/8	2038	Yes (PE Only)	Yes
2045-1	T15554	Multi-jurisdictional	Chesapeake Bay Bridge-Tunnel Parallel Thimble Shoal Tunnel	Virginia Beach	Northampton County	New Alignment, Widening	2	4	2024	Yes	Yes
2045-1A	T24867	Multi-jurisdictional	Chesapeake Bay Bridge-Tunnel Parallel Chesapeake Tunnel	Virginia Beach	Northampton County	New Alignment, Widening	2	4	2030	Yes (PE/RW Only)	Yes (PE Only)
2045-521		Multi-jurisdictional	Enhanced Bus Service/Bus Replacement - WATA	N/A	N/A	Enhanced Bus Service/Bus Replacement	N/A	N/A	N/A	No	Yes
2045-50	Study UPC: 113543	Multi-jurisdictional	Hampton Roads Express Lanes (HREL) Network	Jefferson Ave	Bowers Hill Interchange	High-Occupancy-Toll lanes	N/A	1/2	2027	(portions)	Yes
2045-50	117840 (PE UPC) / 119637	Multi-jurisdictional	I-64 Express Lanes - Segment 1A	1,800' east of Patrol Road Bridge	3,500' east of Curlew Bridge	High-Occupancy-Toll Part-Time Shoulder Lanes	N/A	0/1	2026	Yes	Yes
2045-50	121360	Multi-jurisdictional	HREL - Segment 1A - CN Only (child project of UPC 119637)	Patrol Road	Tidewater Dr	High-Occupancy-Toll Part-Time Shoulder Lanes	N/A	0/1	2026	Yes	Yes
2045-50	121361	Multi-jurisdictional	HREL - Segment 1A - CN Only (child project of UPC 119637)	Patrol Road	Tidewater Dr	High-Occupancy-Toll Part-Time Shoulder Lanes	N/A	0/1	2026	Yes	Yes
2045-50	120863	Multi-jurisdictional	HREL - Segment 1B (Associated with UPC 117840)	Tidewater Drive	I-264	High-Occupancy-Toll Part-Time Shoulder Lanes	N/A	0/1	2026	Yes	Yes
2045-50	112923	Multi-jurisdictional	HREL - Segment 2 (HOV-to-HOT Conversion Project)	I-64/I-264	I-64/I-464	Conversion to HOT lanes	2	2	2022	Yes	Yes
2045-50	118376	Multi-jurisdictional	I-64 Settlers/I-564 ITS (associated with HREL Segment 3)	Settlers Landing Road	I-564	High-Occupancy-Toll ITS	N/A	N/A	2026	Yes	Yes
2045-50	117839	Multi-jurisdictional	HREL - Segment 4A-4B - Phase 1	Jefferson Avenue	LaSalle Avenue	Reconstruction w/added capacity	N/A	N/A	2026	Yes	Yes
2045-520		Multi-jurisdictional	Hampton Roads Regional Transit System - 757 Express	N/A	N/A	Regional Transit Backbone Improvements	N/A	N/A	N/A	No	Yes
2045-2	115008, 115009, 115010	Multi-jurisdictional	I-64 Widening Including Hampton Roads Bridge-Tunnel	Near I-664/Hampton Coliseum	I-564	Widening	4	6/8	2025	Yes	Yes
2045-41	106689, 109790	Multi-jurisdictional	I-64 Peninsula Widening; Segment 3	1.05 miles west of Route 199 (Exit 242)	1.15 miles west of Route 199, Lightfoot (Exit 234)	Widening	4	6	2021	Yes	Yes

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APPENDIX C – TYPICAL CONFORMITY PROCESS FOR AMENDMENTS AND UPDATES

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Figure C-1: Typical Conformity Process for Updates and Amendments to LRTP and/or TIP

