E. Inter-Agency Consultation for Conformity (IACC) Procedures for Hampton Roads

VDOT, in partnership with HRTPO staff, has developed new Inter-Agency Consultation for Conformity (IACC) procedures to streamline the transportation conformity process for the Hampton Roads region, particularly the process for amendments to the LRTP and TIP. IACC is required by federal and state transportation conformity regulations (40 CFR 93.105 and 9VAC5-151-70, respectively). The proposed new IACC procedures have been reviewed by staff at FHWA, FTA, EPA, and VDEQ; before implementation, HRTPO Board approval is needed. As part of the Board's approval, the current Hampton Roads Interagency Consultation Group (ICG) procedures that were developed in 2005 would be revoked, and the ICG would be discontinued.

As background, the Hampton Roads region was previously in "maintenance" for the 1997 National Ambient Air Quality Standard (NAAQS) for ozone and subject to transportation conformity rule requirements before EPA revoked that standard effective April 6, 2015 (Federal Register, Volume 80, Number 44, March 6, 2015). With that revocation, transportation conformity requirements were no longer applicable for the Hampton Roads region. On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit issued its decision in *South Coast Air Quality Mgmt. District v. EPA* ("South Coast II," 882 F.3d 1138) and held that transportation conformity determinations must be made in "orphan" 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nonattainment or maintenance for the 1997 ozone NAAQS and attainment for the 2008 ozone NAAQS when the 1997 ozone NAAQS was revoked. The Hampton Roads region met both conditions: 1) the region was in maintenance for the 1997 ozone NAAQS at the time of its revocation in 2015 by EPA, and 2) the region had already been designated attainment (on May 21, 2012) for the 2008 ozone NAAQS. Therefore, per the South Coast II decision, and notwithstanding the revocation by EPA of the applicable NAAQS, conformity requirements for the 1997 ozone NAAQS were again made applicable for Hampton Roads.

Following EPA 2018 guidance issued pursuant to the South Coast II decision and given that transportation control measures were not specified in the air quality plan for Hampton Roads, conformity assessments for this region need only document consultation and fiscal constraint. The latter may be done simply by reference to documentation of fiscal constraint already provided with the Long-Range Transportation Plan (LRTP) and the Transportation Improvement Program (TIP). Detailed traffic and emission modeling and the associated documentation are not required. The new IACC procedures reflect these changes in regulatory context and also formalize programmatic approaches for amendments demonstrating fiscal constraint and projects that are not regionally significant.

The draft *Procedures for Inter-Agency Consultation for Conformity for Hampton Roads* were made available for public review from February 27, 2023 to March 13, 2023. No comments were received.

Report Link: *Procedures for Inter-Agency Consultation for Conformity for Hampton Roads*

The Transportation Technical Advisory Committee (TTAC) has recommended approval of the new Procedures for Inter-Agency Consultation for Conformity (IACC) for Hampton Roads.

RECOMMENDED ACTION:

Approve the Procedures for Inter-Agency Consultation for Conformity for Hampton Roads, including:

- Revocation of previous *Consultation Procedures for the Hampton Roads Ozone Nonattainment Area in Support of the Transportation Conformity Regulations* (Revised July 2005)
- Dissolution of the Inter-agency Consultation Group
- Designation of the HRTPO as the lead agency for conformity, working in consultation and cooperation with VDOT
- Establishment of new programmatic approaches for amendments, namely,
    - FHWA/FTA-VDOT-HRTPO programmatic approach for demonstrating fiscal constraint
    - FHWA/FTA-VDOT-HRTPO programmatic approach for FHWA/FTA findings of conformity for non-exempt projects that are not regionally significant