COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD

9VAC5 CHAPTER 151.
REGULATION FOR TRANSPORTATION CONFORMITY.

Part I. General Definitions.
9VAC5-151-10. Definitions.

Part II. General Provisions.
9VAC5-151-20. Applicability.
9VAC5-151-30. Authority of board and DEQ.

Part III. Criteria and Procedures for Making Conformity Determinations.
9VAC5-151-40. General.
9VAC5-151-50. Designated provisions.
9VAC5-151-60. Word or phrase substitutions.
9VAC5-151-61. Exceptions to the designated provisions incorporated by reference.
9VAC5-151-70. Consultation.

PART I.
GENERAL DEFINITIONS.

9VAC5-151-10. Definitions.

A. For the purpose of this chapter and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in this section.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in this chapter, terms used shall have the meanings given them by the federal Clean Air Act, Titles 23 and 49 of the United States Code, 40 CFR 93.101, other U.S. Environmental Protection Agency regulations, other USDOT regulations, 9VAC5-170-20 (definitions, Regulation for General Administration), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

"Applicable implementation plan" or "implementation plan" means, as defined in § 302(q) of the federal Clean Air Act, the portion (or portions) of the

implementation plan, or most recent revision thereof, which has been approved under § 110, or promulgated under § 110(c), or promulgated or approved pursuant to regulations promulgated under § 301(d) and which implements the relevant requirements of the federal Clean Air Act.

“Board” means the State Air Pollution Control Board or its designated representative.

“Control strategy implementation plan revision” means the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy the federal Clean Air Act requirements for demonstrations of reasonable further progress and attainment (including implementation plan revisions submitted to satisfy §§172(c), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 187(g), 189(a)(1)(B), 189(b)(1)(A), and 189(d); §§ 192(a) and 192(b), for nitrogen dioxide; and any other applicable provision of the federal Clean Air Act requiring a demonstration of reasonable further progress or attainment).

"Criteria pollutant" means any pollutant for which a national ambient air quality standard is established in 40 CFR Part 50.

"DEQ" means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"DEQ Director" means the director of the Virginia Department of Environmental Quality or a designated representative.

"Donut areas" means geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of one or more metropolitan areas. These areas are not isolated rural nonattainment and maintenance areas.

"Emergency" means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety, or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

"EPA" means the U.S. Environmental Protection Agency.

"Federal Clean Air Act" means Chapter 85 (§ 7401 et seq.) of Title 42 of the United States Code.

"FHWA" means the Federal Highway Administration of U.S. Department of Transportation (USDOT).

"FHWA/FTA project" means any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway

program or the Federal mass transit program, or requires FHWA or FTA approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

"FTA" means the Federal Transit Administration of USDOT.

"Highway project" means an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

1. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

2. Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

3. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

"Isolated rural nonattainment and maintenance areas" means areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have federally required metropolitan transportation plans or TIPs and do not have projects that are part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. Projects in such areas are instead included in state wide transportation improvements programs. These areas are not donut areas.

"LPO" or "Lead Planning Organization" means the organization certified by the state as being responsible for the preparation of control strategy implementation plan revisions for nonattainment areas under § 174 of the federal Clean Air Act. The organization includes elected officials of local governments in the affected nonattainment area, and representatives of DEQ, VDOT, the MPO(s) for the affected area, and other agencies and organizations that have responsibilities for developing, submitting or implementing any of the plan revisions. It is the forum for cooperative air quality planning decision-making.

"Maintenance area" means any geographic region of the United States previously designated nonattainment under § 107 of the federal Clean Air Act and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan.

"Maintenance plan" means a revision to the applicable implementation plan, meeting the requirements of § 175A of the federal Clean Air Act.

"MPO" or "Metropolitan Planning Organization" means the organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 USC § 134 and created as a result of the designation process in 23 USC §134(d). It is the forum for cooperative transportation decision-making.

"NEPA" means the National Environmental Policy Act of 1969 as amended (42 USC § 4321 et seq.)

"NEPA process completion" means, with respect to FHWA or FTA, the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

"Nonattainment area" means any geographic region of the United States which has been designated as nonattainment under § 107 of the federal Clean Air Act for any pollutant for which a national ambient air quality standard exists.

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

"Project" means a highway project or transit project.

"Recipient of funds designated under Title 23 USC or the Federal Transit Laws" means any agency at any level of State, county, city, or regional government that routinely receives Title 23 USC or Federal Transit Laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

"Regionally significant project" means a transportation project (other than an exempt project) that is on a facility which 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.

"TCM" or "transportation control measure" means any measure that is specifically identified and committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated into the applicable implementation plan through the process established in § 176 (c)(8) of the federal Clean Air Act, that is either one of the types listed in § 108 of the federal Clean Air Act, or any other measure

for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this chapter.

"TIP" or ""transportation improvement program" means a transportation improvement program developed by a metropolitan planning organization under 23 USC § 134(j).

"Transit" means mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

"Transit project" means an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

1. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

2. Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

3. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

"Transportation plan" means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR Part 450.

"Transportation project" means a highway project or a transit project.

"USDOT" means the U.S. Department of Transportation.

"VDOT" means the Virginia Department of Transportation.

"VDRPT" means the Virginia Department of Rail and Public Transportation.

"Welfare" means that language referring to effects on welfare includes,

but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well being.

PART II.
GENERAL PROVISIONS.

9VAC5-151-20. Applicability.

A. The provisions of this chapter shall apply to the following actions:

1. Except as provided for in subsection C of this section or 40 CFR 93.126, conformity determinations are required for:

a. The adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a MPO or USDOT;

b. The adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a MPO or USDOT; and

c. The approval, funding, or implementation of FHWA/FTA projects.

2. Conformity determinations are not required under this chapter for individual projects which are not FHWA/FTA projects. However, 40 CFR 93.121 applies to the projects if they are regionally significant.

3. This chapter shall apply to conformity determinations for which the final decision is made on or after the program approval date. For purposes of applying this subdivision, the program approval date of the regulation adopted by the board on March 26, 2007 shall be the date 30 days after the date on which a notice is published in the Virginia Register acknowledging that the administrator has approved the regulation adopted by the board on March 26, 2007.

B. The provisions of this chapter shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

1. The provisions of this chapter apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide (CO), nitrogen dioxide (NO_2), particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}); and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$).

2. The provisions of this chapter also apply with respect to emissions of the following precursor pollutants:

a. Volatile organic compounds (VOCs) and nitrogen oxides (NO_X) in ozone areas;

b. NO_X in nitrogen dioxide areas;

c. VOCs or NO_X or both, in PM_{10} areas:

(1) If the EPA Regional Administrator or the DEQ Director has made a finding that transportation-related emissions of one or both of these precursors within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and USDOT; or

(2) If the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy;

d. NO_X in $PM_{2.5}$ areas:

(1) Unless both the EPA Regional Administrator and the DEQ Director have made a finding that transportation-related emissions of NO_X within the nonattainment area are not a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and USDOT, or

(2) The applicable implementation plan (or implementation plan submission) does not establish an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy; and

e. VOC, sulfur dioxide (SO_2) and/or ammonia (NH_3) in $PM_{2.5}$ areas either:

(1) If the EPA Regional Administrator or the DEQ Director has made a finding that transportation-related emissions of any of these precursors within the nonattainment area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and USDOT, or

(2) If the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

3. The provisions of this chapter apply to $PM_{2.5}$ nonattainment and maintenance areas with respect to $PM_{2.5}$ from re-entrained road dust if the EPA Regional Administrator or the DEQ Director has made a finding that re-entrained road dust emissions within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and USDOT, or if the applicable implementation plan (or implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the reasonable further progress, attainment or maintenance strategy. Re-entrained road dust emissions are produced by travel on

paved and unpaved roads (including emissions from anti-skid and deicing materials).

4. The provisions of this chapter apply to maintenance areas through the last year of the area's maintenance plan approved under §175A(b) of the federal Clean Air Act, unless the applicable implementation plan specifies that the provisions of this chapter shall apply for more than 20 years.

C. In order to receive any FHWA/FTA approved or funding actions, including NEPA approvals, for a project phase subject to this chapter, a currently conforming transportation plan and TIP must be in place at the time of project approval as described in 40 CFR 93.114, except as provided by 40 CFR 93.114(b).

D. For areas or portions of areas which have been continuously designated attainment or not designated for any National Ambient Air Quality Standard for ozone, CO, PM_{10}, $PM_{2.5}$ or NO_2 since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any National Ambient Air Quality Standard for any of these pollutants, the provisions of this chapter shall not apply with respect to that National Ambient Air Quality Standard for 12 months following the effective date of final designation to nonattainment for each National Ambient Air Quality Standard for such pollutant.

9VAC5-151-30. Authority of board and DEQ.

A. No provision of this chapter shall limit the power of the board to take such appropriate action as necessary to control and abate air pollution in emergency situations.

B. In accordance with the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia) and the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and by the adoption of this chapter, the board confers upon the DEQ the administrative, enforcement and decision making authority enumerated in this chapter.

C. The board reserves the right to exercise its authority in any of the powers delegated in this chapter should it choose to do so.

D. The DEQ Director has final authority to adjudicate contested decisions of subordinates delegated powers by him prior to appeal of the decisions to the circuit court or consideration by the board.

PART III.
CRITERIA AND PROCEDURES FOR MAKING CONFORMITY DETERMINATIONS.

9VAC5-151-40. General.

The Environmental Protection Agency (EPA) regulations promulgated at 40 CFR Part 93, Subpart A (Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 USC or the Federal Transit Laws) and designated in 9VAC5-151-50 are incorporated by reference into this chapter as amended by the word or phrase substitutions given in 9VAC5-151-60. The 40 CFR section numbers appearing in 9VAC5-151-50 identify the specific provisions incorporated by reference. The specific version of the provisions incorporated by reference shall be that contained in the CFR (2012) in effect July 1, 2012.

9VAC5-151-50. Designated provisions.

Section	Title
40 CFR 93.101	Definitions.
40 CFR 93.102	Applicability.
40 CFR 93.103	Priority.
40 CFR 93.104	Frequency of conformity determinations.
40 CFR 93.106	Content of transportation plans.
40 CFR 93.107	Relationship of transportation plan and TIP conformity with the NEPA process.
40 CFR 93.108	Fiscal constraints for transportation plans and TIPs.
40 CFR 93.109	Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.
40 CFR 93.110	Criteria and procedures: Latest planning assumptions.
40 CFR 93.111	Criteria and procedures: Latest emissions model.
40 CFR 93.112	Criteria and procedures: Consultation.
40 CFR 93.113	Criteria and procedures: Timely implementation of TCMs.
40 CFR 93.114	Criteria and procedures: Currently conforming transportation plan and TIP.
40 CFR 93.115	Criteria and procedures: Projects from a plan and TIP.
40 CFR 93.116	Criteria and procedures: Localized CO, PM_{10}, and $PM_{2.5}$ violations (hot-spots).
40 CFR 93.117	Criteria and procedures: Compliance with PM_{10} and $PM_{2.5}$ control measures.
40 CFR 93.118	Criteria and procedures: Motor vehicle emissions budget.
40 CFR 93.119	Criteria and procedures: Interim emissions in areas without motor vehicle emissions budgets.
40 CFR 93.120	Consequences of control strategy implementation plan failures.

40 CFR 93.121	Requirements for adoption or approval of projects by other recipients of funds designated under Title 23 USC or the Federal Transit Laws.
40 CFR 93.122	Procedures for determining regional transportation-related emissions.
40 CFR 93.123	Procedures for determining localized CO, PM_{10}, and $PM_{2.5}$ concentrations (hot-spot analysis).
40 CFR 93.124	Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).
40 CFR 93.125	Enforceability of design concept and scope and project-level mitigation and control measures.
40 CFR 93.126	Exempt projects.
40 CFR 93.127	Projects exempt from regional emissions analyses.
40 CFR 93.128	Traffic signal synchronization projects.
40 CFR 93.129	Special exemptions from conformity requirements for pilot program areas.

9VAC5-151-60. Word or phrase substitutions.

In all of the provisions designated in 9VAC5-151-50 substitute:

1. DEQ Director for director of the State air quality agency or State air agency.

2. MPO for agency or organization developing the transportation plan.

3. VDOT for State department of transportation.

4. USDOT for DOT.

5. This chapter for this subpart.

6. 9VAC5-151-20 B for § 93.102(b).

7. 9VAC5-151-20 D for § 93.102(d)

8. 9VAC5-151-70 for § 93.105.

9. 9VAC5-151-70 D 1 f for § 93.105(c)(1)(vii).

10. 9VAC5-151-70 B and F for § 93.105 (a)(2) and (e).

11. 9VAC5-151-70 D 1 a for § 93.105(c)(1)(i).

12. 9VAC5-151-70 D 1 c for § 93.105(c)(1)(iii).

13. 9VAC5-151-70 E for § 93.105(d).

14. 9VAC5-151-70 F for § 93.105(e).

9VAC5-151-61. (Repealed.)

9VAC5-151-70. 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.

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.

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 the implementation plans, transportation plans, TIPs, any revisions to the preceding documents, and associated conformity determinations.

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 non-metropolitan 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.

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.

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.

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.

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:

(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).

(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.

(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.

(d) Monitoring regionally significant projects.

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

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

(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.

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

(1) Developing statewide transportation plans and statewide TIPs.

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

(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.

(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.

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

(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.

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. 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:

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.

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.

c. Evaluating whether projects otherwise exempted from meeting the requirements of 40 CFR 93.126 and 40 CFR 93.127 should be treated as non-exempt 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.

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.

e. Notifying all parties to the consultation process of transportation plan or TIP amendments which 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.

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.

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.

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 which 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.

b. Consulting on emissions analysis for transportation activities which 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.

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.

4. To assure that plans for construction of regionally significant projects which 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.

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 which 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.

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.

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

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 can not 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 3 a 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 which 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.

HISTORICAL NOTES:

Effective Date: May 31, 2007
Promulgated: May 31, 2007
Amended: December 31, 2008
Amended: March 2, 2011
Amended: August 15, 2012

REG\VAC\CH151-TRN