

Revision to the Commonwealth of Pennsylvania

STATE IMPLEMENTATION PLAN

For Transportation Conformity

Volume I

Submission to the United States Environmental Protection Agency

in fulfillment of the requirements of

Section 176 (c) of the Clean Air Act Amendments of 1990

Prepared by

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in cooperation with

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I. Introduction and Background

Purpose of this Submittal

Section 176 (c)(1) of the Clean Air Act Amendments of 1990 lays the foundation for the Transportation Conformity state implementation plan (SIP) revision. Section 176(c)(1) states:

(c)(1) No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan after it has been approved or promulgated under section 110. No metropolitan planning organization designated under section 134 of title 23, United States Code, shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 110. The assurance of conformity to such an implementation plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality. Conformity to an implementation plan means:

(A) Conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and

(B) That such activities will not-

- (i) Cause or contribute to any new violation of any standard in any area;
- (ii) Increase the frequency or severity of any existing violation of any standard in any area; or
- (iii) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel and congestion estimates as determined by the metropolitan planning organization or other agency authorized to make such estimates.

Section 51.390 of the Federal Conformity Rule (hereafter referred to as “the Rule”) requires states to submit a State Implementation Plan revision to the United States Environmental Protection Agency (EPA) and United States Department of Transportation (USDOT) that contains “criteria and procedures for

USDOT, Metropolitan Planning Organizations (MPOs), and other state or local agencies to assess the conformity of plans, programs and projects, consistent with” federal conformity regulations.

The Commonwealth submitted these SIP revisions to EPA in 1994 and 1998; EPA did not take action on these submittals.

This Conformity SIP revision does the following:

- Encompasses changes in federal requirements;
- Implements the streamlined SIP requirements in Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59;
- Updates the Pennsylvania MPO, Rural Planning Organization (RPO) and Independent County (IC) organizations;
- Includes updates to existing and creation of new Memoranda of Agreement (MOAs) outlining specific consultation processes for each affected MPO, RPO and IC; and,
- Encompasses federal establishment of the 8-hour ozone and fine particulate matter national ambient air quality standards and designations of nonattainment areas under these new standards.

This document supersedes all Conformity SIP revisions previously submitted to EPA.

History of Pennsylvania’s Transportation Conformity SIP Revision

Requirements for implementing the Conformity provisions of the federal Clean Air Act (Act) have undergone significant change since the advent of the first EPA regulation implementing the amendments in 1993. The original SIP revision consisted of two major portions: the main body, encompassing required language from the federal Rule, and MOAs implementing specific local consultation procedures for each affected local planning organization, in conjunction with PENNDOT, the Pennsylvania Department of Environmental Protection (DEP), EPA and USDOT.

- Pennsylvania submitted its initial Conformity SIP revision to the EPA on November 2, 1994. This SIP revision was ruled technically and administratively complete by EPA. EPA did not take action on the SIP revision submittal as the agency was in the process of issuing three separate amendments to the Rule.
- EPA changes to the federal Conformity Rule on August 4, 1997 triggered a requirement that Pennsylvania amend its original Conformity SIP

revision submittal within 12 months of that date. Pennsylvania submitted a revised Conformity SIP by the August 15, 1998 deadline. This submittal was not acted upon by EPA due to the pending changes to the federal regulation.

- Additional revisions to the federal Conformity Rule took place in July 2004, for which a revised SIP revision submittal was not required due to the anticipated imminent passage of the federal transportation authorization legislation, which was believed likely to include provisions affecting the conformity SIP requirements. This legislation, called SAFETEA-LU, passed on August 10, 2005 and provides for a streamlined Conformity SIP revision.

Changes to the organization and geographic coverage of Pennsylvania's MPOs and Rural Planning Organizations (RPO) and Independent County (IC) have been made since 1998. EPA has also designated certain areas as nonattainment for ozone and promulgated new designations for fine particulates less than and or equal to 2.5 microns in diameter (PM_{2.5}). The updated Conformity SIP revision addresses these changes.

In the absence of an approved SIP, the Commonwealth has been implementing transportation conformity consistent with its most recently submitted SIP revision, except where provisions in the SIP revision have been superseded by changes in federal regulation or modified by national litigation, or where a different approach is necessitated by changes in geographic boundaries for planning and air quality.

II. Pertinent State and Federal Regulations and Guidance

Federal regulations require states to submit a Conformity SIP revision in compliance with the Clean Air Act Amendments of 1990, which includes the development of a SIP revision encompassing specific elements of the conformity Rule.

Section 4 of the Pennsylvania Air Pollution Control Act (APCA) (35 PS §4004) authorizes and requires the Pennsylvania Department of Environmental Protection (DEP) to implement the provisions of the Clean Air Act (42 USC §§7401 et seq.).

EPA publication EPA420-B-06-901, "Interim Guidance for Implementing the Transportation Conformity Provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)", February 2006, provides guidance to states regarding the development of a revised Conformity SIP and implementation of other provisions of SAFETEA-LU.

This Conformity SIP revision does not implement any new air pollution requirements or restrictions. Rather, the SIP revision makes federally enforceable, under the Clean Air Act, certain provisions regarding consultation processes, and regional and project level pollution mitigation measures which may be agreed to in the development of a Transportation Improvement Program (TIP) or long range plan (Plan), or project, respectively.

40 CFR Chapter 1, part 51, Subpart T, §51.390 requires a Conformity SIP and revisions to that SIP within 1 year of a change in federal law or regulations. EPA made changes to 40 CFR Part 93 effective July 1, 2004 and May 6, 2005. The SIP submittal deadlines associated with these revisions (July 1, 2005 and May 6, 2006) remain, but EPA does not believe those revisions are necessary following the passage of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users¹.

This legislation became law on August 10, 2005 and included changes to the conformity rule (40 CFR parts 52 and 91), including those regarding the Conformity SIP, and directs EPA to revise its conformity rules to be in accordance with SAFETEA-LU.

III. 40 CFR Part 93: Three key sections that must be addressed in State Implementation Plans

SAFETEA-LU section 6011(f)(4) changes the requirements for Conformity SIP revisions such that states need to address only the following three sections of the rule at 40 CFR Part 93:

- § 93.105 Consultation
- § 93.122 Procedures for determining regional transportation-related emissions.
- § 93.125(c) Enforceability of design concept and scope and project level mitigation and control measures.

Each section must be addressed and, as appropriate, tailored to state needs and practices.

The full text of these three sections is included in Volume 2, Appendix A.

IV. Principles of Pennsylvania's Transportation Conformity SIP Revision

As required by 40 CFR §51.390(d), Pennsylvania's Transportation Conformity SIP revision addresses all requirements in the federal Conformity rule "in a

¹ EPA publication EP420-B-06-901, February 2006, page 37, question 7.6.

manner which gives them full legal effect." States must be able "...to require MPOs, project sponsors, ... recipients of federal funds, and PENNDOT to comply with the requirements of state conformity procedures."

Section 51.390 (d) states that the Transportation Conformity SIP revision must address all requirements of Part 93, Subpart A (e.g., all provisions of the Conformity Rule). In preparing transportation conformity SIP revisions, states can either adopt the necessary language of the federal Conformity Rule verbatim or incorporate the rule into their SIP by reference. However, there are some parts of the rule that either must be tailored in order to make them enforceable, or could be tailored to improve readability.

These provisions are as follows:

Section 93.105: This section requires the adoption of area-specific consultation procedures. By definition, these procedures must be developed by local agencies in consultation with state and federal agencies. It is important that the state's consultation procedures are clearly defined and enforceable. The following section of this Conformity SIP revision (Section V) details the Interagency Consultation, Resolution of Conflict, and Public Involvement Procedures.

In accordance with the Rule's requirements for enforceable SIP measures and adequate state authority to compel compliance, the Commonwealth is submitting this Transportation Conformity SIP revision as a package of legally binding agreements between responsible state agencies and other parties. This SIP revision includes:

- Memoranda of Agreement (MOAs) addressing Section 93.105 executed with PENNDOT's various official planning partners. These official planning partners include: MPOs, RPOs, ICs², official local air agencies as defined under the Pennsylvania APCA, and certain public transit agencies. This MOA is part of Volume II of this Conformity SIP and is therefore federally enforceable.

Entities required to fulfill requirements related to transportation conformity for any portion of their membership or duties will be required to execute an MOA that implements this Conformity SIP. By signing the MOA, the planning partner agrees to abide by the policies and procedures set forth in the Transportation Conformity SIP. Volume II, Appendix 3 contains the executed

² Pennsylvania RPOs and independent counties have transportation and transportation planning and air quality planning responsibilities parallel to MPOs in their respective jurisdictions. This authority is codified at 53 Pa. C.S. Sections 2341-2348.

MOAs for Pennsylvania's ozone and particulate matter nonattainment and maintenance areas.

- Other Appendices include relevant portions of the federal regulations, maps of ozone, particulate matter and carbon monoxide nonattainment and maintenance areas, and public comments and responses to comments.

Future agencies and entities which may become subject to the provisions of this conformity SIP revision, by virtue of air quality designation, organizational change or otherwise, will become governed by this SIP immediately and appropriate MOAs will be created or revised to implement 40 CRF 93.105.

Section 93.122(a)(4)(ii): This provision stipulates that the conformity SIP revision submission must require that written commitments to implement transportation control measures (TCMs)³ be obtained prior to conformity determinations and that the commitments be fulfilled. This section states:

(ii) The conformity implementation plan revision required in §51.390 of this chapter must provide that written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and that such commitments must be fulfilled.

Pennsylvania hereby adopts the following language regarding section 93.122(a)(4)(ii), which is EPA's alternate language⁴.

“Written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and such commitments must be fulfilled.”

Section 93.125(c): This provision is similar to section 93.122(a)(4)(ii) and states that the SIP revision submission must require that written commitments for mitigation measures be obtained before conformity determinations are made and that such commitments must be met. The language is:

³ Transportation Control Measure (TCM) – any measure specifically identified and committed to in the applicable SIP that is either one of the types listed in Section 108 of the CAA 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, excluding technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions.

⁴ Conformity SIP Guidance, From Suzanne Rudzinski, Director Transportation and Regional Programs Division, OTAG, EPA to EPA Regional Air Directors regions 1-10, November 18, 2004, Page 8.

(c) The implementation plan revision required in §51.390 of this chapter shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

Pennsylvania hereby adopts the following language regarding section 93.122(a)(4)(ii), which is EPA's alternate language⁵:

“Written commitments to mitigation measures must be obtained prior to a positive conformity determination and project sponsors must comply with such commitments.”

The Commonwealth understands, and this SIP revision explicitly covers the required elements, factors, processes and procedures for the consultation portion of the Plan Revision. The Commonwealth also recognizes that effective consultation procedures involving all affected agencies and interests are essential in successfully carrying out conformity determinations and related planning and programming activities.

V. Interagency Consultation/Resolution of Conflict/Public Involvement

The following section of this SIP revision describes Pennsylvania's specific procedures for interagency consultation (federal, state and local), the resolution of conflicts and public involvement. This Section V fulfills the requirements of 40 CFR 93.105 for conformity SIP revisions.

Highway or transit projects that need approval by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform to air quality standards before they are approved or funded by USDOT, the state DOT or an MPO/RPO/IC. All MPOs/RPOs/ICs must follow the procedures set forth in the Transportation Conformity SIP revision. All new and existing MPO/RPO/ICs and local air agencies shall comply with the SIP at the time transportation conformity provisions apply. PENNDOT, DEP (or, where appropriate, the local air quality agency), the MPOs, the RPOs and the ICs have agreed to follow the procedures contained in this chapter to consult with each other before making a conformity determination. These agreements in the form of MOAs are attached hereto in Volume 2, Appendix 3 and made a part hereof.

Failure to comply with the requirements of the Conformity SIP revision is a violation of both the SIP and the Pennsylvania Air Pollution Control Act (APCA),

⁵ Conformity SIP Guidance, From Suzanne Rudzinski, Director Transportation and Regional Programs Division, OTAG, EPA to EPA Regional Air Directors regions 1-10, November 18, 2004, Page 9

and is unlawful under Section 8 of the APCA, 35 P.S. § 4008. The APCA provides DEP with the authority to issue such orders as are necessary to enforce the Conformity SIP. Such orders are within the authority granted by Section 10.1 of the APCA, 35 P.S. Section 4010.1.

The procedures discussed in this Section V include consulting with local air quality and transportation agencies, where applicable, as well as with the USDOT and the EPA. The procedures apply to interagency consultation procedures prior to making a conformity determination, and for applicable SIPs and SIP revisions.

Before the Transportation Conformity SIP revision is approved by EPA and before making conformity determinations, the MPOs, RPOs, ICs and PENNDOT must provide reasonable opportunity for consultation with DEP, local air quality and transportation agencies, USDOT and EPA.

A. INTERAGENCY CONSULTATION PROCEDURES: GENERAL FACTORS

1. Representatives of the MPOs, RPOs, ICs, DEP and local air quality planning agencies, PENNDOT and local transportation agencies shall undertake an interagency consultation process, in accordance with this chapter, with each other and with local or regional offices of EPA and USDOT's FHWA and FTA on the development of the Transportation Conformity SIP revision, the list of transportation control measures (TCMs) in the applicable implementation plan, the air quality elements of the unified planning work program, the transportation plan, the TIP, any revisions to the preceding documents, and all conformity determinations required by this rule, as follows:
 - (a) Each MPO/RPO/IC and local air quality planning agency will participate in consultations regarding issues directly relevant to it and the transportation plans, programs and projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside their geographic domain and that are not anticipated to affect transportation or vehicular emissions in their geographic domain.
 - (b) The agency responsible for preparing the final document to be produced by an effort (including SIPs and SIP revisions, project or regional conformity determinations or decisions) subject to the interagency consultation process will initiate the consultation process(es) herein by notifying other

participants, convening consultation meetings, assuring that all relevant documents and information are supplied to all participants in the consultation process in a timely manner, and maintaining a written record of the consultation process. This agency will be identified at the start of each consultation effort as the Lead Agency.

- (c) Regular consultation on “major activities,” defined as the development of the transportation plan, the development of a TIP or long range plan (Plan), or any determination of conformity on a TIP or long range plan, shall include meetings which shall be scheduled regularly, beginning no later than 6 months, whenever possible, prior to the date a final document is required or prior to the date on which the lead agency begins its own work on such a document. Such processes should be linked to the state’s TIP update process whenever possible.

Prior to the initial meeting, the Lead Agency shall prepare and communicate to the other parties a proposed schedule of recommended interagency consultation meetings, and shall provide an agenda to all relevant parties in advance of each meeting. However, nothing in this SIP or the agreement entered into between all the parties shall prohibit the schedule from being amended from time to time, on an as needed basis, up to and including the time necessary to take final action on the major activity.

Technical meetings shall be convened as necessary by this same Lead Agency.

- 2. Each Lead Agency in the consultation process, consistent with the requirements of 23 CFR part 450, shall confer with all the agencies which are identified under paragraph (1) of this section with an interest in the document to be developed, provide all information to those agencies needed for meaningful input, and, prior to taking any action, consider the views of each such agency and respond to those views prior to any final decision on such documents. This may be accomplished via telephone, electronic documents, paper distribution and/or meetings.

The Lead Agency must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have

not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. The Lead Agency shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required.

3. The organizational level of regular consultation shall be determined by the head of the participating agencies, as follows: PENNDOT - Deputy Secretary for Planning; DEP – Deputy Secretary for Waste, Air & Radiation Management; FHWA – Division Administrator; FTA – Regional Administrator; and MPOs/RPOs/ICs – Executive Director, County Planning Director or equivalent position, as applicable to the agency: Local Air Agency - Director.

B. INTERAGENCY CONSULTATION PROCEDURES: SPECIFIC PROCESSES.

The specific processes for interagency consultation consist of two distinct scenarios.

Scenario 1 details the specific processes for areas in Pennsylvania that have not assumed the responsibility for air quality conformity activities. Air quality modeling, report preparation, SIP revisions, and several other activities in these areas are conducted by PENNDOT. The local transportation planning agency is responsible for providing for any public comment period and official action on the item.

Scenario 2 details the specific processes for the areas that have assumed responsibility for all technical and procedural aspects of air quality conformity in their geographic domain.

The MOA will designate the Scenario under which that MPO/RPO/IC is classified. An MPO/RPO/IC may be reclassified to a different Scenario by PENNDOT.

Scenario 1 – Areas That Have Not Opted-Into Assuming Primary Air Quality Conformity Responsibilities

1. An interagency consultation process involving certain MPOs, RPOs, IC, DEP and local air quality planning agencies, PENNDOT, and local transportation agencies, USEPA, and

USDOT shall be undertaken for the following, all of which will be initiated by PENNDOT:

- (a) Evaluating and choosing the model(s) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses, including vehicle miles traveled (VMT) forecasting.
- (b) Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purpose of regional emissions 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;
- (c) Evaluating whether projects otherwise exempted from meeting the requirements of 40 CFR 93.126 and 93.127 should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;
- (d) A process for the development of a list of the Transportation Control Measures (TCMs) which are in the applicable implementation plan. Making a determination whether past obstacles to implementation of TCMs which 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. 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;
- (g) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in 40 CFR 93.126;
- (j) Determining which conformity tests and methodologies will be used for isolated rural nonattainment and maintenance areas, as required by section 93.109(I)(2)(iii).

2. An interagency consultation process involving the MPO, RPO, IC, DEP, local air quality planning agencies, PENNDOT and local transportation agencies shall be undertaken for the following, all of which will be initiated by PENNDOT:
 - (a) Identifying and evaluating events that will trigger new conformity determinations (i.e., the addition or deletion of regionally significant projects to or from a TIP or Plan, a significant change in project design concept and scope since the project was last analyzed for conformity, or the addition or deletion of TCMs to or from a TIP or Plan), in addition to those triggering events (i.e., the adoption of SIP revisions that revise or establish a transportation-related emissions budget); and,
 - (b) Consulting on emissions analysis for transportation activities which cross the borders of MPOs, RPOs, ICs, nonattainment areas or air basins.
3. Where the metropolitan planning area does not include the entire nonattainment or maintenance area, an interagency consultation process involving the MPO, RPO, IC and PENNDOT 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. This will be initiated by PENNDOT.
4. An interagency consultation process to be initiated by the applicable MPO, RPO, or IC, will 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 of the United States Code or the Federal Transit Act, are disclosed to the applicable MPO, RPO, or IC on a regular basis, and to assure that any changes to those plans are immediately disclosed to the applicable MPO, RPO, or IC, which will inform PENNDOT.
5. An interagency consultation process involving the MPO, RPO or IC, and other recipients of funds designated under Title 23 of the United States Code or the Federal Transit Act shall be undertaken for assuming the location and design concept and scope of projects which are disclosed to the MPO, RPO or IC, but whose sponsors

have not yet decided these features in sufficient detail to perform the regional emissions analysis. This will be initiated by the MPO, RPO, or IC.

6. An interagency consultation process involving the MPO, RPO or IC, DEP, local air quality planning agencies, PENNDOT and local transportation agencies, shall be undertaken for the design, schedule and funding of research and data collection efforts for regional transportation model development IC (e.g., household or? travel transportation surveys) by the MPO, RPO or IC, to be initiated by the MPO, RPO or IC, in consultation with PENNDOT.
7. An interagency consultation process shall be undertaken for the process for providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption, to be initiated by PENNDOT for conformity analyses and determinations and/or by DEP for SIPs and SIP revisions. This may be accomplished through the electronic means and/or the distribution of paper documents.

Scenario 2 – Areas That Have Assumed Responsibility for the Technical and Procedural Aspects of Air Quality Conformity

1. An interagency consultation process involving certain MPOs, DEP, and local air quality planning agencies, PENNDOT, and local transportation agencies, USEPA and USDOT 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 emissions analyses, including vehicle miles traveled VMT forecasting, to be initiated by the MPO, RPO or IC in consultation with PENNDOT;
 - (b) Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purpose of regional emissions 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 the MPO, RPO, or IC, in consultation with PENNDOT;

- (c) Evaluating whether projects otherwise exempted from meeting the requirements of 40 CFR 93.126 and 93.127 should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason, to be initiated by the MPO, RPO, or IC;
 - (d) A process for the development of a list of the TCMs which are in the applicable SIP will be initiated by the MPO, RPO or IC. Making a determination whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable SIP 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 the MPO, RPO or IC. This consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable SIP to remove TCMs or substitute TCMs or other emission reduction measures;
 - (g) Determining which conformity tests and methodologies will be used for isolated rural nonattainment and maintenance areas, as required by section 93.109(I)(2)(iii); to be initiated by the MPO, RPO or IC;
 - (h) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in 40 CFR 93.126, to be initiated by the MPO, RPO or IC.
2. An interagency consultation process involving the MPO, RPO or IC, DEP, and local air quality planning agencies, PENNDOT and local transportation agencies shall be undertaken for the following:
- (a) Evaluating events which will trigger new conformity determinations (i.e., the addition or deletion of regionally significant projects to or from a TIP or Plan, a significant change in project design concept and scope since the project was last analyzed for conformity, or the addition or deletion of TCMs to or from a TIP or Plan), in addition to those triggering events (i.e., the adoption of SIP revisions

that revise or establish a transportation-related emissions budget) in 40 CFR 93.104, to be initiated by the MPO, RPO or IC; and,

- (b) Consulting on emissions analysis for transportation activities which cross the borders of MPOs, RPOs, ICs, nonattainment areas or air basins, to be initiated by the MPO, RPO or IC.
3. Where the metropolitan planning area does not include the entire nonattainment or maintenance area, an interagency consultation process involving the MPO, RPO, or IC and PENNDOT 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 the MPO, RPO or IC.
 4. An interagency consultation process initiated by the applicable MPO, RPO or IC will 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 of the United States Code or the Federal Transit Act, are disclosed to the applicable MPO, RPO or IC on a regular basis, and to assure that any changes to those plans are immediately disclosed.
 5. An interagency consultation process involving the MPO and other recipients of funds designated under Title 23 of the United States Code or the Federal Transit Act shall be undertaken for assuming the location and design concept and scope of projects which are disclosed to the MPO, but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis, to be initiated by the MPO, RPO or IC.
 6. An interagency consultation process involving the MPO, DEP, and local air quality planning agencies, PENNDOT and local transportation agencies shall be undertaken for the design, scheduling, and funding of research and data collection efforts and regional transportation model development by the MPO, RPO or IC (e.g., household travel transportation surveys), to be initiated by the MPO, RPO, or IC in consultation with PENNDOT.

7. An interagency consultation process shall be undertaken for the process for providing final documents (including applicable SIPS and SIP revisions) and supporting information to each agency after approval or adoption, to be initiated by the MPO, RPO or IC for conformity analyses and determinations and/or DEP for SIPs and SIP revisions. This may be accomplished through electronic means and/or the distribution of paper documents.

C. CONFLICT RESOLUTION

1. Conflicts between PENNDOT, DEP (or where applicable, the local air agency), the MPOs, the RPOs or the IC shall be elevated to the Governor if they cannot be resolved by the Secretaries of PENNDOT and DEP (and/or local air agency). The parties shall make every effort to resolve any differences before appealing to the Governor. The parties recognize that the conflict can be one of three types: a conflict between PENNDOT and DEP (and/or local air agency); a conflict between PENNDOT and the MPO, RPO or IC; and a conflict between the MPO, RPO or IC, and DEP (and/or local air agency).
 - (a) If the conflict is between PENNDOT and the MPO, RPO, or IC, the parties shall follow the coordination procedures of the Metropolitan Planning Rule of 23 CFR 450.210.
 - (b) If the conflict is between the MPO or PENNDOT and DEP (and/or local air agency), or the RPO or PENNDOT and DEP (and/or local air agency), or the IC or PENNDOT and DEP (and/or local air agency):
 - (1) DEP (and/or local air agency) has fourteen (14) calendar days to appeal to the Governor after PENNDOT or the MPO, RPO or IC has notified the Secretary of DEP (and/or Director of local air agency) of the resolution of the Secretary's comments. Notification to the Secretary of DEP (and/or Director of local air agency) shall be in writing and shall be hand-delivered. A copy should also be concurrently hand delivered to the Director of the Bureau of Air Quality, DEP. The fourteen (14) day clock shall commence when the MPO, the RPO, the IC, or PENNDOT has confirmed receipt by the Secretary of DEP (and/or Director of local

air agency) of the resolution of the comments of DEP (and/or local air agency).

- (2) If DEP (and/or local air agency) appeals to the Governor, the final conformity determination must have the concurrence of the Governor.
- (3) The appeal to the Governor will consist of the following: the conformity determination and any supporting documents; DEP's (and/or local air agencies) comments on the conformity determination; the MPO, RPO, IC or PENNDOT resolution to DEP's (and/or local air agencies) comments; and DEP's (and/or local air agencies) appeal document.
- (4) DEP (and/or local air agency) will provide a complete appeal package to the MPO, the RPO, the IC, and PENNDOT when the appeal is filed.
- (5) If the Governor does not concur with the conformity determination, the Governor may direct DEP (and/or local air agency) to submit a SIP revision, or may direct that the planned program or project be revised.
- (6) If the Governor agrees that the conformity determination made by the MPO, the RPO, the IC and PENNDOT is correct, the MPO, the RPO, the IC and PENNDOT may proceed with the final conformity determinations.
- (7) If DEP (and/or the local air agency) does not appeal to the Governor within fourteen (14) days as provided in subparagraph (1)(a)(i) of this section, the MPO, RPO, IC and/or PENNDOT may proceed with its final conformity determination.
- (8) The Governor may delegate his or her role in this process, but not to the head or staff of PENNDOT, DEP, any local air agency, the State Transportation Commission, or any MPO, RPO, or IC.

D. PUBLIC INVOLVEMENT

1. PENNDOT and its planning partners have established proactive public involvement processes which provide for review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR Part 450 and 40 CFR 93.112.

2. PENNDOT (for agencies designated under Scenario 1) or the MPO, RPO or IC (for agencies designated under Scenario 2) will specifically address in writing all public comments, including those relating to known plans for regionally significant projects which are not receiving FHWA or FTA funding or approval and have not been properly addressed in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP.