

Transportation Committee

For the Metropolitan Council meeting of April 30, 2014

Subject: Authorize the Regional Administrator to sign a Memorandum of Agreement regarding determination of conformity of transportation Plans, Programs, and Projects to State Implementation Plans

Proposed Action

That the Metropolitan Council authorizes the Regional Administrator to sign a Memorandum of Agreement regarding determination of conformity of transportation Plans, Programs, and Projects to State Implementation Plans with FHWA, FTA, EPA, MnDOT, MPCA, and the Duluth-Superior Metropolitan Interstate Council.

Summary of Committee Discussion/Questions

MTS Manager Technical Planning Support Mark Filipi presented this item. There were no questions from committee members.

Motion by Reynoso, seconded by McCarthy and passed.

Hearing no objection, Chair Duinick said that this item could proceed to the full Council as a consent item.

Transportation Committee

Meeting date: April 14, 2014

For the Metropolitan Council meeting of April 30, 2014

Subject: Authorize the Regional Administrator to sign a Memorandum of Agreement regarding determination of conformity of transportation Plans, Programs, and Projects to State Implementation Plans

District(s), Member(s): All

Policy/Legal Reference: 42 USC §7506(c), 40 CFR parts 51 and 93, Minn. Stat. §116.05, §116.07, and §473.146

Staff Prepared/Presented: Mark Filipi, Manager Technical Planning Support, 651-602-1725

Jonathan Ehrlich, Planning Analyst, 651-602-1408

Division/Department: Transportation / Metropolitan Transportation Services (MTS)

Proposed Action

That the Metropolitan Council authorizes the Regional Administrator to sign a Memorandum of Agreement regarding determination of conformity of transportation Plans, Programs, and Projects to State Implementation Plans with FHWA, FTA, EPA, MnDOT, MPCA, and the Duluth-Superior Metropolitan Interstate Council.

Background

The State Implementation Plan (SIP) is a federally required planning document prepared and maintained by the Minnesota Pollution Control Agency identifying state actions and programs to implement designated responsibilities under the Clean Air Act to reduce emissions and maintain compliance with national ambient air quality standards.

Transportation conformity is the process that links transportation planning to the SIP. Conformity determinations by USDOT and the MPO are required for transportation plans (the TPP), programs (the TIP), and federally approved transportation projects in non-attainment and maintenance areas. The Twin Cities is currently designated as a maintenance area.

The federal Conformity Rules lay out the technical and procedural requirements of conformity determinations and require states to develop their own conformity procedures as part of their SIP. These procedures and commitments are called the Transportation Conformity SIP. In Minnesota, the Transportation Conformity SIP will take the form of a Memorandum of Agreement between the member agencies of the Interagency Air Quality and Transportation Planning Committee (consisting of FHWA, FTA, EPA, MnDOT, MPCA, Metropolitan Council, and Duluth-Superior Metropolitan Interstate Council).

The attached Memorandum of Agreement was prepared by the Minnesota Interagency Air Quality and Transportation Planning Committee for submittal to EPA as the state's federally required Transportation Conformity State Implementation Plan (SIP). It addresses the three requirements of a Transportation Conformity SIP:

- Procedures identifying the roles and responsibilities of involved agencies, interagency consultation, technical analysis, conformity determination procedures, and conflict resolution procedures;

- Commitments to any required control measures that are not included in the TPP and TIP;
- Commitments to mitigation measures to obtain project level conformity determination.

Upon signature of the Memorandum of Agreement by all seven agencies, it will be published by MPCA in the State Register for public comment, and then submitted to U.S. EPA for approval.

Rationale

A state with a maintenance area is required by federal law to have an approved Transportation Conformity SIP.

Funding

Approval of the TPP, TIP, and receipt of federal transportation funds requires that the state have an approved SIP.

Known Support / Opposition

There is no known opposition. The Transportation Advisory Board recommended approval of this memorandum of agreement at its meeting on March 19, 2014.

**2014 MEMORANDUM OF AGREEMENT REGARDING
DETERMINATION OF CONFORMITY OF TRANSPORTATION PLANS, PROGRAMS
AND PROJECTS TO STATE IMPLEMENTATION PLANS**

This Memorandum of Agreement (“MOA”) is entered into by and among the Minnesota Pollution Control Agency (“MPCA”), the Minnesota Department of Transportation (“MnDOT”), the two affected Metropolitan Planning Organizations (“MPOs”): the Metropolitan Council (“Council”), and the Metropolitan Interstate Council (“MIC”), the U.S. Environmental Protection Agency, (EPA) the Federal Highway Administration (“FHWA”), and the Federal Transit Administration (“FTA”) (the “Parties”) in order to satisfy the transportation-related emissions conformity requirements of the federal Clean Air Act (“CAA”), 42 U.S.C. § 7506(c); the Federal Aid Highway Act, 23 U.S.C. § 109(j); 49 U.S.C. ch. 53; related provisions of the federal Moving Ahead for Progress in the 21st Century Act (“MAP-21”), Pub. L. No 112-141 including, but not limited to, §§ 1113 (amending 23 U.S.C. § 149(b), 1201-1203 (amending 23 U.S.C. §§ 134, 135 & 150), and 20005-20006 (amending 49 U.S.C. §§ 5303 & 5304), 126 Stat. 460-464, 500-526, & 628-652 (2012) and the implementing regulations of EPA at 40 CFR parts 51 and 93 (2012), the FHWA at 23 CFR part 450 (2013) and the FTA at 49 CFR part 613 (2012); and

RECITALS

WHEREAS, Section 176(c) of the CAA, 42 U.S.C. § 7506(c), requires federally-funded transportation plans, programs, and projects that are funded or approved under 23 U.S.C. (Highways), or the Federal Transit Act, 49 U.S.C. ch. 53 (Public Transportation) to conform with State and Federal air quality implementation plans; and

WHEREAS, federal agency activities in Minnesota are subject to the provisions of 42 U.S.C. § 7506(c) (1) which state: “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 [42 U.S.C.] section 7410....”; and

WHEREAS, MPO activities in Minnesota are subject to the provisions of 42 U.S.C. § 7506(c)(1) which state: “No metropolitan planning organization designated under [23 U.S.C.] section 134..., shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under [42 U.S.C.] section 7410....”

WHEREAS, the EPA’s regulations codified at 40 CFR parts 51 and 93 (2012) implement the requirement that MPOs/State Departments of Transportation (“State DOTs”) and the FHWA/ FTA must make conformity determinations on transportation plans and transportation improvement programs in nonattainment and maintenance areas before they are adopted, approved or accepted, and on projects in those areas before they are approved or funded, Notice of Adoption of Rules re: Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans, 58 Fed. Reg. 62,188 (Nov. 23, 1993) (“EPA’s Notice”); and

WHEREAS, EPA determined that each State should have the flexibility to design a consultation process that will facilitate the development of approaches to maximize both air quality and mobility, EPA’s Notice, 58 Fed. Reg. 62,201, §IV.I.1; and

WHEREAS, EPA’s Notice stated that EPA’s approach is, “...the validity of a conformity determination should depend on proper consultation procedures and that each State and participating agencies should jointly develop their own legally enforceable State conformity procedures.” 58 Fed. Reg. 62,201, §IV.I.2; and

WHEREAS, EPA’s Notice stated: “EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA’s satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures.” 58 Fed. Reg. 62,209, §V.C.; and

WHEREAS, EPA’s regulations, 40 CFR § 51.390 and Part 93, give State and Local governments certain flexibility in selecting the performance measures used as tests of conformity and certain discretion when a transportation plan does not conform to a State Implementation Plan (“SIP”) (for example, to allow motor

vehicle emissions budgets in a submitted SIP to be used to determine conformity instead of the "build/no-build" test, and to allow rural areas to choose among several conformity tests to address the time period after that covered by the SIP); and

WHEREAS, CAA section 176(c) (4) (E), 42 U.S.C. § 7506(c) (4) (E), as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, Title VI § 6011(f), 119 Stat. 1882 (August 10, 2005), and maintained by the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405 (July 6, 2012), and 40 CFR § 51.390(b) require states to submit transportation conformity SIPs that include the following three requirements of 40 CFR Part 93 (**Determining Conformity of Federal Actions to State or Federal Implementation Plans**; referred to hereafter as the "Federal Conformity Rule"): a) 40 CFR § 93.105 which outlines the criteria for consultation procedures related to transportation conformity; b) 40 CFR § 93.122(a)(4)(ii) which states that conformity SIPs must require that written commitments to control measures be obtained prior to a conformity determination if the control measures are not included in the MPO's transportation plan and transportation improvement program and commitments must be fulfilled; and c) 40 CFR § 93.125(c) which states that conformity SIPs must require that written commitments to project-level mitigation or control measures be obtained prior to a positive conformity determination, and that project sponsors comply with such commitments. Transportation Conformity SIPs may include any other provisions of 40 CFR part 93, subpart A (currently §§ 93.100-93.129). Additional guidance is provided in 40 CFR §§ 51.390 and 51.851, EPA's January 2009 **Guidance for Developing Transportation Conformity State Implementation Plans**, and EPA's January 2009 **Guidance for Implementing the Clean Air Act Section 176(c) (8) Transportation Control Measure Substitution and Addition Provision**; and

WHEREAS, Transportation Planning regulations at 23 CFR Part 450 establish rules for statewide and metropolitan transportation planning; and

WHEREAS, the Minnesota parties possess the following Minnesota statutory authority:

- **Minn. Stat. § 116.05, subd. 1.** Directs all state departments and agencies to cooperate with the MPCA and its Commissioner and assist them in the performance of their duties, and authorizes them to enter into necessary agreements with the agency, and the MPCA is authorized to cooperate and to enter into necessary agreements with other departments and agencies of the state, with municipalities, with other states, with the federal government and its agencies and instrumentalities, in the public interest and in order to control pollution under chapters 115 and 116.
- **Minn. Stat. § 116.07, subds. 1 and 2.** Grants the MPCA the powers and duties to improve air quality, adopt standards of air quality, and enhance the quality, management and protection of the State's air resources through comprehensive plans for the prevention, abatement and control of air pollution in Minnesota.
- **Minn. Stat. § 174.03**, requires that all of the State's regional and municipal agencies and commissions created under authority of law shall, when dealing with transportation, follow the recommendations made by MnDOT. MPOs are required to enter into agreements with MnDOT relating to transportation planning under 23 CFR § 450.314, Metropolitan Planning Agreements. MnDOT has authority over the development of the Statewide Transportation Improvement Program ("STIP") and, under Minnesota law, has been delegated the Governor's final approval authority over all MPO Transportation Improvement Programs ("TIPs"), including amendments thereto, possessed by the Governor under 23 U.S.C. § 134 and 49 U.S.C. §§ 5301 et seq. MnDOT will not approve any MPO TIP or amendment thereto that contains a nonconforming project and will not include a nonconforming TIP in the STIP. Finally, MnDOT has authority over planning funds provided to MPOs for transportation planning purposes under state law. 23 CFR § 450.320 requires MPOs to develop and implement a congestion management system in transportation management areas ("TMAs") with specific requirements for nonattainment areas; and 23 CFR Part 420, Subpart A, makes MnDOT responsible for administration of

federal planning funds to MPOs in Minnesota for work to carry out urban transportation planning. MnDOT will not request federal or state funding for any nonconforming projects, programs or plans and may withhold funds for failure to follow conformity procedures.

- **Minn. Stat. § 161.20, subd. 2(1)** authorizes and directs MnDOT to expend funds to construct and maintain highways and related projects within the meaning of Title 23, United States Code, and all acts amendatory and supplementary thereto, and the federal regulations issued under that Code, as well as to receive and expend all funds in accordance with the requirements of acts of Congress making such funds available.
- **Minn. Stat. § 473.146, subd. 4**, Designates the Council as the planning agency for any long-range comprehensive transportation planning required by section 134 of the Federal Highway Act of 1962, Section 4 of the Urban Mass Transportation Act of 1964 and Section 112 of the Federal Aid Highway Act of 1973 and other federal transportation laws.
- **Governor Wendell R. Anderson December 14, 1973 Designation Letter**, Designates the MIC as the planning agency to carry out the metropolitan transportation planning process as required by the Federal Highway Act of 1962 and other subsequent federal transportation laws.

WHEREAS, the parties agree and declare that this MOA and the consultation procedures herein are enforceable contractual agreements under Minnesota law, as part of the SIP itself under 42 U.S.C. § 7410(a)(2)(E), and under the following Minnesota statutory authority:

- Minn. Stat. § 116.05, subd. 1, cited above, and
- Minn. Stat. § 471.59, subds. 1 & 10: Authorizes governmental units to jointly or cooperatively exercise any power common to the contracting parties or perform any service or function for another governmental unit that the providing governmental unit can provide for itself;
- Section 176(c) of the CAA Amendments of 1990, 42 U.S.C. § 7506(c), requires federally-funded transportation plans, programs, and projects that are funded or approved under title 23, United States Code, or the federal Transit Act to conform with State and Federal air quality demonstration plans. EPA and FHWA/FTA have the authority under the law to ensure these regulations are fully implemented.

NOW, THEREFORE, the parties intending to be legally bound agree as follows:

A. PURPOSE

The purpose of this MOA is to implement and satisfy Section 176(c) of the CAA, as amended, 42 U.S.C. 7506(c), and the related provisions of 23 U.S.C. §§ 109, 134, and 135 which require the conformity of transportation projects which are developed, funded, accepted, or approved by the USDOT or approved or adopted by the MPOs under Title 23, United States Code, or the Federal Transit Act (49 U.S.C. 1601 et seq.) with the SIP required under Section 110, 42 U.S.C. § 7410 relating to nonattainment and maintenance areas under 42 U.S.C. §§ 7407(d) and 7505(a). This MOA establishes a uniform policy for interagency consultation processes involving all affected agencies such that the consultation issues as described in 40 CFR § 93.105(c) are addressed.

B. APPLICABILITY

The Transportation Conformity SIP applies to all EPA designated non-attainment and maintenance areas for transportation related criteria pollutants within the state of Minnesota.

C. TRANSPORTATION CONFORMITY CONSULTATION

(1) Affected Agencies

For the purpose of consulting on transportation conformity issues, the following participating agencies will comprise the Minnesota Interagency Air Quality & Transportation Planning Committee (“MNIAQTPC”):

- U.S. Environmental Protection Agency (EPA)
- Minnesota Pollution Control Agency (MPCA)
- Federal Highway Administration (FHWA)
- Federal Transit Administration (FTA)
- Minnesota Department of Transportation (MnDOT)
- Minnesota Metropolitan Planning Organizations (MPOs) located in EPA designated non-attainment and maintenance areas, e.g. The Metropolitan Council (Council), and Metropolitan Interstate Council (MIC). (An MPO only participates if a conformity issue is specific to an area/county served by the MPO).

The MNIAQTPC is a work group that makes technical and policy recommendations regarding transportation conformity issues. The workgroup will be comprised of technical staff members from the affected agencies associated directly with transportation conformity. Each agency will appoint a designated contact for the MNIAQTPC. The MNIAQTPC is a forum to continue the dialogue and sharing of information between air quality and transportation planning agencies regarding transportation conformity. Participating agencies provide coordination, advice, consultation, and cooperation regarding air quality and transportation planning. The forum uses a variety of communication methods for consultation: meetings, written and electronic correspondence, workshops, site visits, telephone discussions, and websites. The form of consultation that the MNIAQTPC undertakes largely depends on the proposal, the complexity, and the relationship with the parties to be consulted.

(2) Authorities & Limitations

The affected agencies operate according to specific responsibilities, authorities, and limitations under various federal and state laws. In addition, because of an established working relationship, the agencies listed above recognize and respect the responsibilities, authorities and limitations of the other participating agencies. Each agency bears a responsibility to provide data and documentation in a timely manner for use by other agencies. Each agency is responsible for following the relevant state and federal requirements for public participation, public notice and comment, and formal adoption procedures. The respective agencies acknowledge a responsibility to notify each other of upcoming actions that will affect the domain of any other affected agencies.

(3) MNIAQTPC Process Initiation: Transportation Conformity Actionable Events and Lead Agency Roles

The MNIAQTPC consultation process is to be initiated and directed by the corresponding lead agency for the following transportation conformity related tasks and events. The designation of a lead agency is determined by legal obligations and professional expertise. Any MNIAQTPC member agency may initiate the consultation process to address pertinent air quality or transportation planning issues related to transportation conformity events.

- Development/review of draft or revisions to the SIP - lead agency: MPCA;
- Development of motor vehicle emissions budgets- lead agency: MPCA;
- Development of periodic emissions inventory for criteria pollutants - lead agency: MPCA;
- Development/review of air quality modeling and or any other analytical methods used for SIP development - lead agency: MPCA;
- Development/review of on-road mobile source emissions models and methods - lead agency: EPA, or MPCA, or MPO, or MnDOT;

- Development/review of travel demand models or any other analytical methods used to predict vehicle miles traveled - lead agency: MPO or MnDOT;
- Development/review of regionally significant projects and changes - lead agency: MPO or MnDOT;
- Development/review of drafts for a new or amended Long Range Transportation Plan (“LRTP”), and TIP; - lead agency: MPO;
- Development of conformity determination for a new or amended LRTP and TIP - lead agency: MPO;
- Development of conformity determination for projects in non-metropolitan non-attainment and maintenance areas - lead agency: MnDOT;
- Development of a list of the Transportation Control Measures (“TCMs”) to be considered in the development/review of draft or revisions to the SIP, if necessary - lead agency: MPCA;
- Revisions to a TCM prepared by the MPO for the MPCA to be included in the SIP - lead agency: MPO, MnDOT;
- Notification of pending transportation conformity lapse - lead agency: FHWA/FTA;
- Notification of SIP actions, including those that may lead to nonconformity and/or sanctions - lead agency: EPA;
- Adequacy findings and notification of such findings for motor vehicle emission budgets - lead agency: EPA;
- Helps each MPO develop Plans and TIPs, reviews and comments on MPO Plan and TIPs - lead Agency: MPCA, MnDOT, FHWA/FTA, EPA;
- Approves TIPs as Governor’s designee for inclusion in the State TIP – lead agency: MnDOT;
- Makes final joint conformity determination on Plans and TIPs and projects; provides guidance and assistance to each MPO to help fulfill conformity requirements – lead agency: FHWA/FTA; (In area of conformity, FTA Region 5 has delegated most of its responsibilities to FHWA via memorandum of understanding dated July 14, 2004, but all findings are joint from both agencies. This agreement is re-affirmed annually.);
- Makes a formal conformity determination on the LRTP or TIP through a resolution of the MPO’s body – lead agency: MPO;
- Ensures the adequacy of the interagency consultation process with respect to Plans, TIPs, and conformity analysis – lead agency: MPO, MnDOT;
- Makes conformity determination for all projects regardless of project sponsor – lead agency: MnDOT or project applicant;
- Accepts the LRTP or TIP and sends them to FHWA and FTA for action – lead agency: MnDOT;
- Provides comments to FHWA on the conformity process and results – lead agency: EPA;
- Reviews the MPO conformity determination – lead agency: FHWA;
- Reviews MPCA, EPA, and public comments and makes final conformity determination on the LRTP or TIP through a joint FHWA/FTA letter – FHWA;
- Maintains all minutes/records of MNIAQTPC actions, regardless of who initiated them – lead agency: MPCA; and
- Conducts the public participation process – lead agency: MPO, MnDOT.
- Development and maintenance of a handbook for transportation conformity procedures-lead agency MPCA

(4) Regular MNIAQTPC Agency Roles & Responsibilities:

(a) The lead MNIAQTPC agency is responsible for the following:

- Initiate the MNIAQTPC consultation process according to transportation conformity actionable events established above;
- Consult with the appropriate representatives of the MNIAQTPC agency;
- Formulate and distribute MNIAQTPC draft and final meeting agendas to representatives of the MNIAQTPC agency in a timely manner; notify and provide MNIAQTPC agencies draft and final documents and appropriate supporting materials prior to formal adoption or publication;
- Solicit input from the MNIAQTPC agencies through participation in the development of draft documents and supporting materials;
- Review significant comments from MNIAQTPC agencies and provide responses in a timely manner prior to formal adoption of the final document;
- Provide written responses to all comments from MNIAQTPC member agencies;

(b) The non-lead MNIAQTPC agencies are responsible for the following:

- Participate in the MNIAQTPC consultation process according to transportation conformity actionable events established above;
- Consult with the lead MNIAQTPC agency and other MNIAQTPC agencies;
- Provide input and technical assistance when requested;
- Review and provide timely comments on draft and final documents and appropriate supporting information prior to formal adoption.

D. SPECIFIC ROLES & RESPONSIBILITIES

(1) U.S. Environmental Protection Agency

EPA is responsible for: approving updated mobile source vehicle emission models; issuing guidance on conformity criteria and procedures; providing modeling and emission inventory development assistance to MPCA, MnDOT, and the MPOs; finding motor vehicle emission budgets adequate or inadequate; approving or disapproving SIP revisions (including TCMs); and reviewing and commenting on regional emissions analyses and conformity determinations for LRTPs and TIPS. Where possible, EPA will participate in development of and review and comment on drafts of air quality conformity analyses.

(2) Minnesota Pollution Control Agency

MPCA is the agency responsible for air quality planning, as well as responsible for developing air quality plans known collectively as the State Implementation Plan (SIP). MPCA is responsible for developing emission inventories, emission budgets, air quality modeling, and SIP demonstrations and revisions. MPCA consults with affected parties and agencies throughout the SIP development and SIP revision processes, conducting briefings and meetings to gather ideas, reviews technical findings, and prepares draft revisions. Prior to formal adoption or publication, MPCA provides the affected agencies with draft documents and supporting materials. MPCA provides final documents and supporting information to each affected agency after approval or adoption.

MPCA provides coordination, advice, consultation, and cooperation to EPA, FHWA, FTA, MN/DOT, Local Public Transit Agencies, and any MPO during the development of any SIP involving TCMs. MPCA is responsible for providing technical and policy guidance to the MPOs and MnDOT regarding procedures to estimate on-road vehicle emissions. In addition, MPCA is the lead agency for maintaining the air quality monitoring network and providing regional ambient air data in Minnesota. MPCA also assists the EPA in making air quality monitoring data available to the public.

(3) Federal Highway Administration and Federal Transit Administration

The FHWA and FTA are responsible for participating on MPO committees and task forces; reviewing the MPO transportation planning processes; providing transportation planning assistance and guidance for LRTPs and TIPs; approving air quality conformity determinations; providing FHWA and FTA air quality and conformity rules, policies and guidance; and providing notification of a pending conformity lapse. (In areas of conformity, FTA Region 5 has delegated most of its responsibilities to FHWA via memorandum of understanding (“MOU”) dated July 14, 2004, but all findings are joint from both agencies. (This MOU is reaffirmed annually.)

(4) Minnesota Department of Transportation

MnDOT is responsible for serving on MPO committees, reviewing the planning processes, conducting conformity determination concurrence reviews on LRTPs, TIPs and Statewide TIPs, and balancing local needs and preferences with the state-administered transportation system's needs. In non-attainment and maintenance areas where there is no designated MPO, MnDOT is the lead transportation agency and assumes the MPO transportation planning responsibilities mentioned in this document. MnDOT will make conformity determinations for projects in non-metropolitan non-attainment and maintenance areas. MnDOT's responsibilities will also include providing updated travel data, fleet mix data and distribution of travel vehicle classifications/vehicle type and road type. MnDOT also helps each MPO develop LRTPs and TIPs, reviews and comments on MPO LRTPs and TIPs; approves TIPs, as the Governor's designee, for inclusion in the STIP; and provides guidance to each MPO to help fulfill conformity requirements.

(5) Metropolitan Planning Organization

Each MPO is responsible for developing two main products through the transportation planning process. The first is a LRTP that includes improvements to highways, transit and other transportation modes to meet the transportation needs of the area over a minimum 20-year period. The second is a TIP, a short-range capital Improvement program for highway, transit, and other transportation mode projects. Both the LRTP and the TIP must conform to the goals and objectives of the CAA, identified by MPCA in the SIP. The MPO is responsible for travel demand model development (or any other analytical methods used to predict vehicle miles traveled), estimating mobile source emissions, and development of TCMs. The MPO will develop mobile source emissions projections and evaluate them in relation to mobile source emissions budgets which are to be included in the SIP. The MPO in consultation with other affected agencies will develop TCMs if needed to demonstrate either attainment or maintenance of the federal National Ambient Air Quality Standards (NAAQS). The MPO is responsible for analyzing the mobile source emissions effects of the LRTP and TIP. The MPO will make conformity demonstrations for LRTPs and TIPs as required by the federal CAA and state law.

The MPO provides coordination, advice, consultation, and cooperation to MPCA, MnDOT, EPA, FHWA and Local Public Transit Agencies during the course of the development of transportation plans, TIPs, and conformity determinations. Prior to formal adoption or publication, the MPO provides the affected agencies with draft documents and supporting materials. The MPO provides final documents and supporting information to each affected agency after approval or adoption. Each MPO actively coordinates with the other agencies during the transportation planning process.

Meetings are scheduled on a regular basis through technical advisory committees and regional planning commission meetings. In addition, meetings are accommodated when necessary and when other MNIAQTPC agencies request them.

(6) Minnesota Local Public Transit Agencies.

Local public transit agencies, although not parties to this MOA, customarily attend all MIC's meetings. The Local Public Transit Agency is responsible for supporting and conducting transportation planning activities for public transportation service, and for providing transit operations to accommodate local and regional connectivity goals. The Local Public Transit Agency, the MPO, and MnDOT customarily coordinate with one another, as applicable, to identify transit projects and impacts.

INTERAGENCY COLLABORATION

(1) Open Dialogue

MPCA, MnDOT, FHWA/FTA, EPA, and the MPOs will engage in an open dialogue through collaborative participation in the planning processes of other affected agencies. Interagency participation will strengthen the relationships between agencies by establishing each as a planning partner with an investment in the entire planning perspective.

(2) SIP Development Process

MPCA will include the relevant MPOs and MnDOT in its SIP development process from the beginning by working with MNIAQTPC. This inter-agency workgroup helps in addressing any concerns of the transportation community. The purpose of MNIAQTPC is to provide a forum to build consensus; in order to achieve this goal, the MNIAQTPC group will meet on a regular basis or as needed to resolve issues. Transportation agencies will also participate in the general meetings and consultations that MPCA undertakes for all stakeholders and interested parties during SIP development. Through this cooperative planning process, MPCA will establish the Motor Vehicle Emissions Budgets ("MVEBs") specified in the SIP.

(3) Transportation Planning Process

MnDOT and the MPOs will involve MPCA in their respective transportation planning process that produces LRTPs and TIPs. The MPOs and MnDOT will design transportation plans that conform to the goals and objectives of the CAA and the MVEBs specified in the SIP. MPCA will provide an air quality perspective to the transportation planning process by participating in MPO and MPCA technical and policy meetings. With consultation and cooperation by MPCA, the MPO and MnDOT will assess and develop the long-range mobile source emission budgetary needs of the urban and/or rural non-attainment areas that maintain and promote the CAA goals and support the economic, demographic, and healthy quality of life in the area. MPCA will also provide consultation regarding the development of mobile source emissions budgets, but does not make transportation planning decisions.

E. INTERAGENCY CONSULTATION PROCESS

(1) Specific Processes

The interagency consultation processes involving MPCA, MnDOT, EPA, FHWA/FTA, MPOs and Local Public Transit Agencies require that these agencies coordinate, advise, consult, and cooperate to address the following issues (see 40 CFR § 93.105(c) for the paragraphs referenced below).

(a) Emissions Models and Methods

The MPO (or MnDOT, for non-attainment and maintenance areas not included in an MPO) is the lead agency for developing transportation and vehicle activity assumptions to be used in transportation plans and regional emissions analyses. The MPO will develop travel characteristics with input from local jurisdictions, Local Public Transit Agencies, and MnDOT. The MPO (or MnDOT, for non-attainment and maintenance areas not included in an MPO) is responsible for mobile source emissions estimates or conformity determinations using the latest motor vehicle emissions model designated or approved by EPA. MPCA is the lead agency for documenting meteorological conditions, fuel specifications, and program settings to be used in hot spot and regional air quality conformity analyses. MPCA will document meteorological conditions in consultation with EPA during the SIP development process. The models and applicable guidance documents or methodologies to be used for hot spot analyses are selected by EPA in collaboration with FHWA/FTA.

(b) Regionally Significant Projects and Changes

The MPO (or MnDOT, for non-attainment and maintenance areas not included in an MPO) is the lead agency to identify regionally significant projects and significant changes to project design concept or scope. Through the consultation process, the MNIAQTPC will make a determination of which minor arterials and other transportation projects should be considered "regionally significant" projects, and which projects may have undergone a significant change in design concept or scope since the previous

TIP or LRTP was approved. As traffic conditions change in the future, the MPOs, in consultation with MPCA, MnDOT, FHWA, and EPA (and Local Public Transit Agencies and FTA in cases involving transit facilities) will consider: 1) the relative importance of minor arterials serving major activity centers, and 2) the absence of principal arterials in the vicinity to determine if any minor arterials should be considered as regionally significant for purposes of regional emissions analysis. Changes to regionally significant projects may or may not necessitate a new regional emissions analysis. Representatives from MPCA, MPOs, MnDOT, Local Public Transit Agencies, FHWA, FTA, and EPA will meet through MNIAQTPC to develop guidelines that identify significant changes in project design and scope for regionally significant projects. Project changes not addressed by the guidelines to be developed will be decided on a case by case basis through consultation by MNIAQTPC. The definition for regionally significant project, process for amending TIP and long-range plans will be addressed in the Handbook for Transportation and Air Quality professionals planned to be updated by MNIAQTPC.

(c) Exempt Project Emissions

The MPO (or MnDOT, for non-attainment areas not included in an MPO) is the lead agency for 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) Transportation Control Measures Delays and Substitutes

The MPO (or MnDOT, for non-attainment areas not included in an MPO) is the lead agency for tracking the implementation of TCMs and making a determination, required by 40 CFR § 90.113(c) (1), whether past obstacles to implementation of TCMs that 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. The MPO will consider whether delays in TCM implementation necessitate revisions to the applicable SIP to remove a TCM or substitute a TCM or other transportation-related emission reduction measure.

(e) Exempt Project Revisions

The MPO (or MnDOT, for non-attainment areas not included in an MPO) is the lead agency for notification to affected agencies of any transportation plan or TIP revisions or amendments that merely add or delete exempt projects listed in 40 CFR §§ 93.126 or 93.127.

(f) Rural Non-Attainment Areas

MnDOT is the lead agency for selecting conformity tests and methodologies required in isolated rural non-attainment and maintenance areas under 40 CFR § 90.109(g)(2)(iii).

(2) Consultation: Triggers and Jurisdictions

The interagency consultation processes involving the MPCA, MnDOT, FHWA/FTA, EPA, MPOs and Local Public Transit Agencies require that these agencies coordinate, advise, consult and cooperate to address the following issues:

(a) Conformity Triggers

The MPO (or MnDOT, for non-attainment areas not included in an MPO) is the lead agency responsible for evaluating events that will trigger new conformity determinations in addition to those triggering events identified in 40 CFR § 93.104.

(b) Multiple Jurisdictions

MnDOT is the lead agency responsible for consultation on procedures for emissions analysis for transportation activities that cross the borders of MPOs, non-attainment areas or air basins.

(3) "Donut" Areas

The MPOs and MnDOT will consult in situations where the metropolitan planning area does not include the entire non-attainment or maintenance area to establish cooperative planning and analysis concerning

conformity determinations of all projects in the nonattainment or maintenance area but outside the MPO planning area.

(4) Locally Funded Regionally Significant Projects

The MPOs and MnDOT will consult with local units of government and public transit agencies to identify all regionally significant transportation projects to be included in the TIP, regardless of whether the projects are federally or locally funded. The procedures established by MnDOT and the MPOs to regularly update and amend the TIP ensure that the plans for the construction of regionally significant projects are disclosed to the MPOs on a regular basis, and that any changes to those plans are immediately disclosed.

(5) Project Details

The MPOs and MnDOT will consult as needed to determine in sufficient detail the design and scope of proposed projects identified in the preceding paragraph to allow for a proper regional emissions analysis under 40 CFR §93.122 in the event that the project sponsors have not yet identified these features.

(6) Travel Model Development

The MPOs and MnDOT will consult as needed on the design, schedule, funding of research, data collection efforts, and regional transportation model development by the MPO.

(7) Document Distribution

The lead agencies will distribute final documents and supporting materials to all agencies identified in Section C, Transportation Conformity Consultation, after approval or adoption.

F. CONFLICT RESOLUTION PROCESS

Historically in Minnesota, the interagency cooperation and adopted processes included in this MOA have resulted in most concerns or conflicts over conformity being resolved through consultations within the Interagency Committee, minimizing the need for a conflict resolution process. However, as established in 40 CFR § 93.105(d), should the MNIAQTPC not be able to resolve such conflicts between the MPCA, MnDOT and the MPOs during routine consultation and/or negotiation, the following procedures will apply:

1. The MNIAQTPC will prepare and agree to a statement of the nature of the conflict.
2. Staff of the affected agencies (MPCA, MnDOT, and affected MPO) will meet in a good faith effort to resolve the conflict in a manner acceptable to all parties.
3. If the staff is unsuccessful, the Commissioners of MPCA and MnDOT, the Executive Directors of the affected MPOs, or their designees, and all other parties to the conflict shall meet to resolve differences in a manner acceptable to all parties.

At any step, consensus of the MPCA, MnDOT and affected MPO representatives shall be considered to have resolved the conflict.

In step three, MPCA, MnDOT, and the affected MPO shall make every effort to resolve differences, including personal meetings between the heads of the MPCA, MnDOT, and the MPO or their policy-level representatives. After this process is completed (the parties have reached consensus or determined that consensus is not possible) MnDOT or the MPO shall notify the Commissioner of the MPCA of the proposed conformity determination (or policy decision), including their response to and resolution of the MPCA’s comments. If a consensus has been reached, the letter of notification shall document that consensus.

If the process has not resulted in consensus, the letter shall notify the MPCA that either party (MnDOT or the MPO) plans to proceed with its conformity decision or policy that is the source of the conflict. The MPCA shall have 14 calendar days after receipt of the letter to appeal the proposed determination of conformity (or other policy decision under this rule) to the Governor.

If the MPCA appeals to the Governor, the final conformity determination must have the concurrence of the Governor. The MPCA must provide notice of any appeal under this subsection to the MPO and MnDOT. If the

MPCA does not appeal to the Governor within 14 days, the MPO or MnDOT may proceed with the final conformity determination. The Governor may delegate his or her role of hearing any such appeal under this subsection and of deciding whether to concur in the conformity determination to another official or agency within the state, but not to the Commissioner or staff of the MPCA, MnDOT, or the Executive Director or staff of an MPO.

G. PUBLIC CONSULTATION PROCEDURES

When making a conformity determination, the MPO (or MnDOT, for non-attainment areas not included in an MPO) has established and will continue to implement a proactive public involvement process which provides opportunity for public 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 § 450.316(a), **Interested Parties, Participation, and Consultation**, 40 CFR §§ 93.105(e), Public consultation procedures, 93.112, **Criteria and Procedures: Consultation**, and 49 CFR § 7.43, **Fee Schedule**.

Additionally, as part of the continuing public involvement process, the MPO (or MnDOT, for non-attainment areas not included in an MPO) will 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. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law. The MPO shall notify the public of any MPCA letter of comment for air quality conformity before the plan or TIP document is scheduled for public comments.

H. TRANSPORTATION CONTROL MEASURES

As specified in 40 CFR § 93.122 (a)(4)(ii), the conformity SIP must provide that written commitments from the responsible agency must be obtained prior to a conformity determination for any transportation control measures which are not included in the MPO's LRTP or TIP. The written commitments, as defined in 40 CFR § 93.101, **Definitions**, must be fulfilled, and should address funding and implementation schedule issues consistent with the control measure. This provision applies to control measures not regulated by the state if these measures are used to claim emissions reductions as part of the conformity determination.

I. PROJECT LEVEL MITIGATION MEASURES

As specified in 40 CFR § 93.125(c), **Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures**, written commitments, as defined in 40 CFR § 93.101, **Definitions**, must be obtained from the project sponsor for any transportation project-level mitigation or control measures identified as conditions for NEPA process completion, and necessary for a positive project level conformity determination (which may include a hot-spot analysis).

Project sponsors must comply with such commitments. Mitigation measures directed at reducing project related construction emissions (such as a dust control plan) but not specifically identified as necessary for a positive project-level (or "Hot Spot") conformity finding, do not require written commitments.

J. MODIFICATION OF THE MOA

Any of the Participating Agencies may propose a revision to the MOA, and request that representatives of the agencies meet to consider such a revision. This MOA adopts by reference the cited provisions of the Minnesota Statutes, the United States Code and Code of Federal Regulation as they exist on the date this MOA is fully executed, but the intent of the parties is to comply with any subsequent mandatory changes to the extent practicable and permitted by law. Opportunity shall be given for public comments on any revision which proposes a significant change in conformity analysis procedures or consultation procedures. The Transportation Conformity portion of the SIP will be revised to reflect any significant changes to this MOA. Such changes shall be subject to the SIP revision requirements of 40 CFR §§ 51.102, 51.104, and 51.105.

K. General Provisions

- (1) The Recitals are incorporated herein and made part of this MOA.
- (2) At Attachment A which is incorporated herein and made a part of this MOA are Definitions applicable to this MOA.
- (3) Terms used but not defined in this MOA shall have the meaning given to them by the CAA, Title 23 and Title 49 United States Code, 40 CFR § 93.101, other EPA regulations, or other USDOT regulations, in that order of priority.
- (4) Regulatory citations herein shall refer to the version of the rule in effect at the time the subject activity was initiated. As new federal regulations affecting transportation planning and air quality are created in the future, the Transportation Conformity SIP will be updated as necessary.
- (5) This MOA is not intended to, nor shall it; vest any rights in persons who are not parties to this MOA. The obligations and responsibilities contained in this MOA are subject to the availability of funding, and are intended for guidance of the parties. They may not serve as the basis for any third party challenges or appeals.
- (6) Modification of this MOA must be in writing and upon approval of the Parties to the MOA.
- (7) If a Party intends to withdraw from this MOA, such withdrawal must be in writing with at least thirty (30) days advance notice.
- (8) This MOA may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOA. The date of execution shall be the date of the last Party's signature.

IN WITNESS WHEREOF, the parties to this MOA have executed this agreement intending to be bound by it.

APPROVED BY:

For the Federal Highway Administration:

Derrell Turner, Division Administrator

Date

For the Federal Transit Administration:

Marisol Simon, Regional Administrator

Date

For the U.S. Environmental Protection Agency:

Susan Hedman, Regional Administrator

(Date)

For the Metropolitan Council:

Pat Born, Regional Administrator

Date

For Metropolitan Interstate Council:

Ron Chicka, Director

Date

For Minnesota Department of Transportation:

Charles Zelle, Commissioner

Date

For the Minnesota Pollution Control Agency:

John L. Stine, Commissioner

Date

Attachment A: DIFINITIONS

- **CAAA** –The Clean Air Act, as amended in 1990.
- **Conformity Determination** – Formal findings of conformity. The MPO makes a formal conformity determination on transportation plans and TIPs. U.S. DOT then performs an independent review and makes a separate formal determination (referred to as a final determination in this document)

- **U.S. DOT** – United States Department of Transportation
- **FHWA** – Federal Highway Administration - a division of U.S. DOT
- **FTA** – Federal Transit Administration - a division of U.S. DOT
- **Interagency Committee** – The committee discussed in this SIP revision, whose prime responsibility is to serve as a unit, along with the MPOs, through which Minnesota implements the organizational level of regular consultation on transportation conformity
- **Lead Agency** - Lead agency means the agency that bears prime responsibility for initiating and/or implementing an action discussed in any paragraph of this SIP revision
- **MAP- 21** – Moving Ahead for Progress in the 21 Century Act. Is a funding and authorization bill to govern United States federal surface transportation spending. The bill was signed by president Obama on July 6, 2012.
- **Metropolitan Council (Met Council, Council)** – Regional transportation planning agency and MPO for the Minneapolis-St. Paul Metropolitan Area.
- **Metropolitan Interstate Council (MIC)** – Regional transportation planning agency and MPO for Duluth-Superior
- **MnDOT** - Minnesota Department of Transportation; the state transportation agency
- **MPCA** - Minnesota Pollution Control Agency (MPCA) means the state agency and the staff of said agency authorized to adopt air pollution standards and regulate air pollution throughout the state, as discussed in this SIP revision
- **MPO** – Metropolitan planning organization means that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. § 134 and 49 U.S.C. § 5303. It is the forum for cooperative decision-making
- **NAAQS** – National Ambient Air Quality Standards
- **NEPA** – The National Environmental Policy Act of 1969, as amended (42 U.S.C. § 4321 et seq.)
- **Project** – A solution to a transportation problem or need. Types of projects include construction – highways, transit, bikeway, or walkways; management – signal systems, transportation management; rideshare, other inclusive transportation enhancement projects, and historic preservation
- **Regionally Significant Project** – 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. A project is generally considered regionally significant in the Twin Cities maintenance area if it adds one or more travel lanes for over one mile, it involves the addition of an interchange, or it involves the reconfiguration of an interchange such that a movement is added or eliminated
- **Seven County Metropolitan Area** – For transportation conformity purposes consists of the entirety of Hennepin, Ramsey, and Anoka counties, and parts of Dakota, Scott, Carver, and Washington counties

- **SIP** – State Implementation Plan – a federally required planning document prepared and maintained by the MPCA. It identifies state actions and program to implement designated responsibilities under the Clean Air Act
- **STIP** – State Transportation Improvement Program – A compendium of all surface transportation projects inclusive of all MPO TIPs developed pursuant to 23 CFR 450 § 450. The STIP is submitted to U.S. DOT
- **TCM** – Transportation Control Measure –any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in § 108 of the CAAA, 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
- **TIP** – Transportation Improvement Program – A multiyear intermodal program of transportation projects covering a metropolitan planning area consistent with the long range transportation plan and developed pursuant to 23 CFR 450 § 450
- **Transportation Plan** – A long-range metropolitan developed by an MPO pursuant to 23 CFR § 450.322