

**2012 MEMORANDUM OF AGREEMENT  
REGARDING  
DETERMINATION OF CONFORMITY OF TRANSPORTATION PLANS, PROGRAMS  
AND PROJECTS TO STATE IMPLEMENTATION PLANS**

**WHEREAS**, Section 176(c) of the Clean Air Act 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; and

**WHEREAS**, on November 23, 1993, the Environmental Protection Agency (EPA) promulgated its original regulation, 40 C.F.R. parts 51 and 93, to implement the requirement that Metropolitan Planning Organizations [MPOs]/State DOTs and FHWA/FTA make conformity determinations on transportation plans and transportation improvement programs in nonattainment areas before they are adopted, approved or accepted, and on projects in those areas before they are approved or funded; 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; and

**WHEREAS**, the validity of a conformity determination depends on proper consultation procedures and that each State and participating agencies should jointly develop their own legally enforceable State conformity procedures; and

**WHEREAS**, the preamble to EPA's original regulation 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"; and

**WHEREAS**, on June 5, 1995, the State of Wisconsin through its Departments of Transportation (WisDOT) and Natural Resources (WDNR) and the affected MPOs, the Southeastern Wisconsin Regional Planning Commission (SEWRPC) and Bay-Lake Regional Planning Commission (BLRPC), entered into a Memorandum of Agreement [Agreement] that is included in an EPA approved Conformity State Implementation Plan (SIP) and to satisfy the requirements of the Clean Air Act (CAA), ISTEA, and the implementing regulations of EPA and FHWA/FTA; and

**WHEREAS**, on November 14, 1995, the Environmental Protection Agency (EPA) promulgated a regulation that adopted minor changes to 40 C.F.R. § 51.420, 51.438 and 51.452 that were incorporated into the Agreement on December 20, 1996 and approved by EPA as part of the Conformity SIP; and

**WHEREAS**, on August 15, 1997, the Environmental Protection Agency (EPA) promulgated a clarified, more flexible and streamlined regulation, 40 C.F.R. § 51.390 and Part 93, to give State and Local governments more authority in selecting the performance measures used as tests of conformity and more discretion when a

transportation plan does not conform to a 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**, on April 10, 1998, the State of Wisconsin through its Departments of Transportation (WisDOT) and Natural Resources (WDNR) and the affected MPOs, the Southeastern Wisconsin Regional Planning Commission (SEWRPC) and Bay-Lake Regional Planning Commission (BLRPC), entered into a Memorandum of Agreement [1998 Agreement] that is included in an EPA approved Conformity State Implementation Plan (SIP) and to satisfy the requirements of the Clean Air Act (CAA), ISTEA, and the implementing regulations of EPA and FHWA/FTA; and

**WHEREAS**, the August 15, 1997 regulations provide that conformity determinations will continue as usual in existing nonattainment and maintenance areas for several years and areas not currently subject to conformity will not start until EPA approves a Wisconsin State Implementation Plan that addresses the new National Ambient Air Quality Standards for ozone (and particulate matter), [Conformity and the Proposed NAAQS Revisions, 62 Fed. Reg. 158, Pages 43798-99 (1997)]; and

**WHEREAS**, the rules and regulations for a Transportation Conformity State Implementation Plan (SIP) are established in Title 40 CFR Part 93 **Determining Conformity of Federal Actions to State or Federal Implementation Plans** (referred to hereafter as the "Conformity Rule") Section 105 **Consultation**. The Conformity Rule outlines the criteria for consultation procedures related to transportation conformity. **Additional guidance is provided in 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**.

**WHEREAS**, The Clean Air Act s. 176(c)(4)(E) as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA-LU), (August, 2005), significantly streamlined the requirements for state conformity SIPs. Clean Air Act s. 176(c)(4)(E) and 40 CFR s. 51.390(b) of the conformity rule now require states to submit conformity SIPs that address only the following provisions of the federal conformity rule: a) 40 CFR s. 93.105 which addresses consultation procedures; 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 conformity determination if the control measures are not included in the metropolitan planning organization's transportation plan and transportation improvement program; and c) 40 CFR s. 93.125(c) which states that conformity SIPs must require that written commitments to mitigation measures be obtained prior to project level conformity determination, and that project sponsors comply with such commitments; and

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

**WHEREAS**, WisDOT, WDNR, U.S. Environmental Protection Agency, Federal Highways Administration, and the affected MPOs, Southeastern Wisconsin Regional Planning Commission (SEWRPC) and Bay-Lake Regional Planning Commission (BLRPC), desire to enjoy the benefits of the new streamlined and flexible EPA regulations as soon as reasonably possible, and have revised their existing Agreement so that it may be included in a revised Conformity State Implementation Plan revision to be submitted to and approved by EPA as soon as reasonably possible, but not later than August 15, 1998; and

**WHEREAS**, the parties agree and declare that this Agreement and the consultation procedures herein are enforceable contractual agreements under Wisconsin law, as part of the SIP itself under 42 U.S.C. 7506(c)(1), and under the following Wisconsin statutory authority:

- **Section 66.0301, Wis. Stats.** Authorizes state agencies to enter into legally binding cooperative contracts for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. Each party to the contract may act under the contract to the full extent of its lawful powers and duties. By statute, this law is interpreted liberally in favor of cooperative action.
- **Sections 285.11(5) and (6) and 285.23, Wis. Stats.** Authorizes and requires WDNR to implement the CAA to 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 this State.
- **Section 85.02, Wis. Stats.** Requires all states, regional and municipal agencies and commissions created under authority of law shall, when dealing with transportation, follow the recommendations made by WisDOT. MPOs are required to enter into agreements with WisDOT relating to transportation planning under 23 C.F.R. § 450.314, Metropolitan Planning Agreements: WisDOT has authority over the development of the Statewide Transportation Improvement Program (STIP) and has been delegated the Governor's final approval authority over all MPO TIPs including amendments thereto under 23 U.S.C. 134 and Chapter 53 of Title 49 [49 U.S.C. §§ 5301 et seq.]. WisDOT 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, WisDOT has authority over planning funds provided to MPOs for transportation planning purposes under state law; and 23 C.F.R. § 450.320 require MPOs to develop and implement a congestion management system in transportation management areas (TMAs) with specific requirements for nonattainment areas; and 23 C.F.R. Part 420, Subpart A, makes WisDOT responsible for administration of federal planning funds to MPOs in Wisconsin for work to carry out urban transportation planning. WisDOT will not request federal or state funding for any nonconforming projects, programs or plans and may withhold funds for failure to follow conformity procedures.

- **Sections 20.395 (9)(qx), 84.01(15), 84.015 and 84.03(1), Wis. Stats.** Authorize and direct WisDOT 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.
- **Section 30.2022(1), Wis. Stats.** Gives the transportation conformity agreements between WisDOT and WDNR full legal effect in Wisconsin. This law requires WisDOT and all activities undertaken through WisDOT to follow its agreements and liaison procedures with WDNR or be subject to the prohibitions or permit or approval requirements specified under secs. 29.29, 30.11, 30.12, 30.123, 30.195, 30.20, 59.971, 61.351, 62.231 or 87.30, and Chapters 281 to 285 or 289 to 299, except s. 281.48, Wis. Stats.
- **Section 1.11, Wis. Stats.** The Wisconsin Environmental Policy Act (WEPA), may be enforced by citizens with regard to activities of WDNR and WisDOT; and

**WHEREAS**, the conformity procedures and agreements in the Conformity State Implementation Plan are also enforceable with regard to federal agency activities in Wisconsin pursuant to 42 U.S.C. 7506(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 7410 of this title."; and

**WHEREAS**, the conformity procedures and agreements in the Conformity State Implementation Plan are also enforceable with regard to metropolitan planning agency activities in Wisconsin pursuant to 42 U.S.C 7506(c)(1): "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 7410 of this title.”

**NOW, THEREFORE,** the parties intending to be legally bound agree that the foregoing paragraphs are part of this Agreement and that if any party fails to comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the right to take appropriate action in any court of competent jurisdiction to enforce this Agreement.

The purpose of this Memorandum of Agreement is to implement Section 176(c) of the CAA, as amended (42 U.S.C. 7506(c), and the related requirement of 23 U.S.C. 109(j), 134 and 135 with respect to the Conformity of transportation projects which are developed, funded or approved by the USDOT and by the Southeastern Wisconsin Regional Planning Commission or Bay Lake Regional Planning Commission (referred to herein as “the MPO”) under Title 23, United States Code, or the Federal Transit Act (49 U.S.C. 1601 et seq.) with the applicable implementation plan required under Section 110 (42 U.S.C. 7410) and Part D of the CAA (42 U.S.C. 7407(d) and 7505(a) relating to nonattainment and maintenance areas. Terms used but not defined in this Agreement shall have the meaning given to them by the CAA, Title 23 and Title 49, United States Code, 40 C.F.R. § 93.101, other EPA regulations, or other USDOT regulations, in that order of priority. This document shall establish a uniform policy for interagency consultation processes involving all affected agencies such that the requirements of Clean Air Act section 176(c) are satisfied and that the consultation issues as described in 40 CFR 93.105(c) are addressed.

#### **A. APPLICABILITY**

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

#### **B. TRANSPORTATION CONFORMITY CONSULTATION**

##### **(1) Affected Agencies**

For the purposes of consulting on transportation conformity issues, the following participating agencies will comprise the Wisconsin Transportation Conformity Interagency Consultation Workgroup (WTCICW):

- Wisconsin Department of Natural Resources (WDNR)
- Wisconsin Metropolitan Planning Organizations (MPOs) located in EPA designated non-attainment and maintenance areas, e.g. The Southeastern Wisconsin Regional Planning Commission (SEWRPC) and the Bay-Lake Regional Planning Commission (BLRPC) (An MPO only participates if a conformity issue is specific to an area/county served by the MPO).
- Wisconsin Department of Transportation (WisDOT)

- Wisconsin Local Public Transit Agencies
- Federal Highway Administration (FHWA)
- Federal Transit Administration (FTA)
- U.S. Environmental Protection Agency (EPA)

The WTCICW is a workgroup that makes technical and policy recommendations regarding transportation conformity issues. The workgroup will be comprised of management and technical staff members from the affected agencies associated directly with transportation conformity. Each agency will appoint a designated contact for the WTCICW. The WTCICW 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 WTCICW 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) WTCICW Process Initiation: Transportation Conformity Actionable Events and Lead Agency Roles**

The WTCICW 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 WTCICW 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: WDNR;
- Development of motor vehicle emissions budgets – lead agency: WDNR;
- Development of periodic emissions inventory for criteria pollutants – lead agency: WDNR;
- Development/review of air quality modeling and or any other analytical methods used for SIP development - lead agency: WDNR;
- Development/review of on road mobile source emissions models and methods - lead agency: EPA, or WDNR, or MPO;

- Development/review of travel demand models or any other analytical methods used to predict vehicle miles traveled - lead agency: MPO or WisDOT, or WDNR;
- Development/review of regionally significant projects and changes - lead agency: MPO or WisDOT;
- Development/review of drafts for a new or amended RTP, TIP, - lead agency: MPO;
- Development of conformity determination for a new or amended RTP or TIP – lead agency: MPO;
- Development of conformity determination for projects in non-metropolitan non-attainment and maintenance areas – lead agency: WisDOT;
- 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: WDNR;
- Revisions to a TCM prepared by the MPO for the WDNR to be included in the SIP – lead agency: MPO;
- Notification of pending transportation conformity lapse - lead agency: FHWA;
- 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.

**(4) Regular WTCICW Agency Roles & Responsibilities:**

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

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

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

- Participate in the WTCICW consultation process according to transportation conformity actionable events established above;
- Consult with the lead WTCICW agency and other WTCICW 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

## **C. SPECIFIC ROLES & RESPONSIBILITIES**

### **(1) Wisconsin Department of Natural Resources**

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

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

### **(2) Metropolitan Planning Organization**

Each MPO is responsible for developing two main products through the transportation planning process. The first is a Regional Transportation Plan (RTP) 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 Transportation Improvement Program (TIP), a short-range capital improvement program for highway, transit, and other transportation modal projects. Both the RTP and the TIP must conform to the goals and objectives of the CAA, identified by WDNR 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 NAAQS. The MPO is responsible for analyzing the mobile source emissions effects of the RTP and TIP. The MPO will make conformity demonstrations for RTPs and TIPs as required by the federal CAA and state law.

The MPO provides coordination, advice, consultation, and cooperation to WDNR, WisDOT, 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 WTCICW agencies request them.

**(3) Wisconsin Department of Transportation**

WisDOT is responsible for serving on MPO councils and committees, reviewing the planning processes, conducting conformity determination concurrence reviews on RTPs, TIPs and Statewide Transportation Improvement Programs (STIPs), 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, WisDOT is the lead transportation agency and assumes the MPO transportation planning responsibilities mentioned in this document. WisDOT will make conformity demonstrations for projects in non-metropolitan non-attainment and maintenance areas. WisDOT's responsibilities will also include providing updated travel data, fleet mix data and distribution of travel vehicle classifications/vehicle type and road type.

**(4) Wisconsin Local Public Transit Agencies**

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 should also coordinate with the MPO and WisDOT to identify transit projects and impacts.

**(5) 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 RTPs 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.

**(6) 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 WDNR, WisDOT, 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 RTPs and TIPs. Where possible, EPA will participate in development of and review and comment on drafts of air quality conformity analyses.

**D. INTERAGENCY COLLABORATION**

**(1) Open Dialogue**

WDNR, WisDOT, FHWA/FTA, EPA, the Wisconsin Local Public Transit Agencies 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**

WDNR will include the relevant MPOs and WisDOT in its SIP development process from the beginning by establishing a specific workgroup for addressing any concerns of the transportation community. The purpose of this work group will be to provide a forum to build consensus; in order to achieve this goal, the work group will meet on a regular basis. Transportation agencies will also participate in the general meetings and consultations that WDNR undertakes for all stakeholders and interested parties during SIP development. Through this cooperative planning process, WDNR will establish the MVEBs specified in the SIP.

**(3) Transportation Planning Process**

WisDOT and the MPOs will involve WDNR in their respective transportation planning process that produces RTPs and TIPs. The MPOs and WisDOT will design transportation plans that conform to the goals and objectives of the CAA and the motor vehicle emission budgets (MVEB) specified in the SIP. WDNR will provide an air quality perspective to the transportation planning process by participating in MPO and WisDOT technical and policy meetings. With consultation and cooperation by WDNR, the MPO and WisDOT 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. WDNR 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 WDNR, WisDOT, EPA, FHWA/FTA, MPOs and Local Public Transit Agencies requires 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 WisDOT, for non-attainment 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 WisDOT. The MPO (or WisDOT, for non-attainment areas not included in an MPO) is responsible for mobile source emission estimates for conformity determinations using the latest motor vehicle emissions model designated or approved by EPA. WDNR 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. WDNR 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 WisDOT, for non-attainment 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 WTCICW 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 RTP was approved. As traffic conditions change in the future, the MPOs, in consultation with WDNR, WisDOT, 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 WDNR, MPOs, WisDOT, Local Public Transit Agencies, FHWA, FTA, and EPA will meet 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 these agencies.

In the SEWRPC region, the current practice is to model all arterials in urban areas, and arterials and major collectors in rural areas. In the Sheboygan metropolitan planning area, the current practice is to model all arterials and collectors. These practices are expected to continue for the Conformity analyses. Any proposed changes to these practices will be discussed at a meeting of the WTCICW.

**(c) Exempt Project Emissions**

The MPO (or WisDOT, for non-attainment areas not included in an MPO) is the lead agency for evaluating whether projects otherwise exempted from meeting the requirements of Title 40 Protection of Environment 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 WisDOT, for non-attainment areas not included in an MPO) is the lead agency for tracking the implementation of TCMs and making a determination 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 WisDOT, 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 Title 40 Protection of Environment CFR §93.126 or §93.127.

**(f) Rural Non-Attainment Areas**

WisDOT is the lead agency for selecting conformity tests and methodologies required in isolated rural non-attainment and maintenance areas.

**(2) Consultation: Triggers and Jurisdictions**

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

**(a) Conformity Triggers**

The MPO (or WisDOT, for non-attainment areas not included in an MPO) is the lead agency responsible for determination of events that will trigger conformity determinations in addition to those identified in §93.104

***Frequency of Conformity Determinations.***

**(b) Multiple Jurisdictions**

WisDOT 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 WisDOT 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 WisDOT 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 WisDOT and the MPOs to regularly update and amend the TIP, ensure that the plans for the construction of regionally significant projects, which are not FHWA/FTA 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 WisDOT 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 in the event that the project sponsors have not yet identified these features.

**(6) Travel Model Development**

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

**(7) Document Distribution**

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

**F. DISPUTE RESOLUTION PROCESS**

As specified in Title 40 Protection of Environment CFR 93.105 **Consultation** (d) **Resolving Conflicts**, conformity related conflicts among WDNR, WisDOT, MPO, and Local Transit Agencies are escalated to the Governor, or designee, if they cannot be resolved by the heads of the involved agencies. The WDNR has 14 calendar days to appeal to the Governor after WisDOT or the MPO has notified the WDNR Secretary of the resolution of his or her comments. If WDNR appeals to the Governor, the final conformity determination must have concurrence of the Governor.

If the WDNR does not appeal to the Governor within 14 days of receiving written notice of approval of the conformity analysis, the MPO or WisDOT may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to any member or employee of WDNR, WisDOT, or the relevant MPO.

**G. PUBLIC CONSULTATION PROCEDURES**

When making a conformity determination, the MPO (or WisDOT, 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 Title 23 Highways CFR Part 450.316(a) **Interested Parties, Participation, and Consultation**, Title 40 Protection of Environment CFR §93.112 **Criteria and Procedures: Consultation**, and Title 49 Transportation CFR Part 7.43 **Fee Schedule**.

Additionally, as part of the continuing public involvement process, the MPO (or WisDOT, 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.

**H. CONTROL MEASURES**

As specified in Title 40 Protection of Environment CFR 93.122 (a)(4)(ii) **Procedures for Determining Regional Transportation-Related Emissions**, written commitments from the responsible agency must be obtained prior to conformity determination for any

transportation control measures identified in the SIP which are not included in the MPO's Transportation Plan or TIP. Written commitments, as specified in Title 40 Protection of Environment CFR 93.101 **Definitions**, must be fulfilled, and should address funding and implementation schedule issues consistent with the control measure as defined in the SIP. This provision applies to control measures not regulated by the state if these measures are used to claim emission reductions as part of the conformity determination.

#### **I. PROJECT LEVEL MITIGATION MEASURES**

As specified in Title 40 Protection of Environment CFR 93.125 (c) **Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures**, written commitments, as defined in Title 40 Protection of Environment CFR 93.101 **Definition**, 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 AGREEMENT**

Any of the principal agencies may propose a revision to the Agreement, and request that representatives of the agencies meet to consider such a revision. This Agreement adopts by reference the cited provisions of the Wisconsin Statutes, the United States Code and Code of Federal Regulation as they exist on the date this Agreement 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 comment on any revision which proposes a significant change in conformity analysis procedures or consultation procedures. The Conformity portion of the SIP will be revised to reflect any significant changes to this Agreement. Such changes shall be subject to the SIP revision requirements of 40 CFR ss. 51.102, 51.140 and 51.105. This Agreement supersedes the 1998 Agreement, upon its approval by EPA as a Conformity SIP revision.

WISCONSIN DEPARTMENT OF TRANSPORTATION

Michael Berg  
Name

5/22/12  
Date

Deputy Secretary  
Secretary or Designee

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

Matt M. Jorney  
Name

3/28/12  
Date

Deputy Secretary  
Secretary or Designee

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[Signature]  
Name

4-22-13  
Date

Regional Administrator  
Title

FEDERAL HIGHWAY ADMINISTRATION

[Signature]  
Name

8-13-2012  
Date

DIVISION ADMINISTRATOR  
Title

FEDERAL TRANSIT ADMINISTRATION

Giorda Reed for Marisa Simon  
Name

7/23/2012  
Date

Regional Administrator  
Title

SOUTHEASTERN WISCONSIN REGIONAL PLANNING COMMISSION

[Signature]  
Name

6.20.12  
Date

Chairman  
Title

BAY-LAKE REGIONAL PLANNING COMMISSION

Richard L. Heath  
Name

6/22/12  
Date

Executive Director  
Title