Committee Report

T Transportation Committee

For the Metropolitan Council meeting of October 14, 2009

Item: 2009-330
Consent

ADVISORY INFORMATION

Date Prepared: September 29, 2009

Subject: Approval of a Memorandum of Agreement for Transportation Conformity State Implementation Plan (TAB Action 2009-48)

Proposed Action:

That the Metropolitan Council concur with the Transportation Advisory Board's (TAB) action to approve the Transportation Conformity State Implementation Plan Memorandum of Agreement (MOA) (attached) and recommend it to the Regional Administrator for signature.

Summary of Committee Discussion / Questions:

There were no questions from or discussion by the committee.

Motion was made, seconded, and passed.

Hearing no objection, Chair Meeks stated that this item could move to the full Council as a Consent Item.

Business Item

Transportation Committee

Item: 2009-330

Meeting date: September 28, 2009

Council meeting: October 14, 2009

ADVISORY INFORMATION	
Date:	September 16, 2009
Subject:	Approval of a Memorandum of Agreement for Transportation Conformity State Implementation Plan (TAB Action 2009-48)
District(s), Member(s):	All
Policy/Legal Reference:	40 CFR Parts 51 and 93 Transportation Policy Plan Strategy 8b
Staff Prepared/Presented:	Arlene McCarthy, Director, MTS (651-602-1754) Mark Filipi, Mgr Technical Plng Spprt (651-602-1725) Jonathan Ehrlich, Senior Planner (651-602-1408)
Division/Department:	Metropolitan Transportation Services (MTS)

Proposed Action

That the Metropolitan Council concur with the Transportation Advisory Board's (TAB) action to approve the Transportation Conformity State Implementation Plan Memorandum of Agreement (MOA) (attached) and recommend it to the Regional Administrator for signature.

Background

States containing air quality non-attainment or maintenance areas are required to have a State Implementation Plan (SIP). The Twin Cities region has been a maintenance area for carbon monoxide since 1999. The SIP is a federally required planning document prepared and maintained by the MPCA identifying state actions and programs to implement designated responsibilities under the Clean Air Act to reduce emissions and keep the area in compliance with ambient air quality standards.

Transportation conformity is the process that links transportation planning to the State Implementation Plan (SIP). Conformity determinations are required for transportation plans, transportation improvement programs, and federally approved transportation projects in non-attainment and maintenance areas.

The federal Conformity Rules of 1993, as last amended in 2008, lay out the technical and procedural requirements of conformity determinations and require states to develop their own conformity procedures as part of their SIP. In Minnesota, the transportation conformity SIP will take the form of a Memorandum of Agreement (MOA) between the member agencies of the Interagency Air Quality and Transportation Planning Committee (consisting of FHWA, FTA, Mn/DOT, MPCA, Metropolitan Council, Duluth-Superior Metropolitan Interstate Council, and St. Cloud Area Planning Organization).

The attached MOA and accompanying handbook that it adopts were 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). The MOA and handbook address 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 MOA 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

By approving this MOA, the state will meet the regulations of 40 CFR Parts 51 and 93 regarding Transportation Conformity.

Funding

There is no funding required for this agreement. Maintaining transportation conformity is essential to continued availability of most federal transportation funds.

Known Support / Opposition

The MOA and accompanying handbook is supported by the Minnesota Interagency Air Quality and Transportation Planning Committee. The document was reviewed by Minnesota Attorney General's staff. Resolutions supporting the MOA have been passed by the policy boards of St. Cloud Area Planning Organization and Duluth/Superior Metropolitan Interstate Council.

There is no known opposition.

Transportation Advisory Board

of the Metropolitan Council of the Twin Cities

September 18, 2009

Peter Bell, Chair
Metropolitan Council
390 Robert Street No.
St. Paul, MN 55101

Mr. Bell,

On September 16, 2009, the Transportation Advisory Board reviewed the Transportation Conformity Procedures for Minnesota (Handbook) and voted to approve the Memorandum of Agreement (MOA) for the Transportation Conformity State Implementation Plan. The TAB now forwards the MOA to the Metropolitan Council for signature.

The TAB forwards this action to the Metropolitan Council along with additional information described in TAB action transmittal 2009-48.

Sincerely,

for Bill Hargis, Acting Chair
Transportation Advisory Board

Transportation Advisory Board
of the Metropolitan Council of the Twin Cities

ACTION TRANSMITTAL

No. 2009- 48

DATE: September 18, 2009

TO: Metropolitan Council

FROM: Transportation Advisory Board

SUBJECT: Transportation Conformity State Implementation Plan (SIP) Memorandum of Agreement (MOA)

MOTION: The TAB approves the attached memorandum of agreement regarding the Transportation Conformity State Implementation Plan and forwards it to the Metropolitan Council for signature.

BACKGROUND AND PURPOSE OF ACTION: The Clean Air Act Amendments of 1990 require that each state develop a plan to assure that federally supported transportation projects, programs, and plans conform to the state air quality implementation plans (SIPs) required under section 110 of the Act. The purpose of the MOA is to provide a means for the Parties to formally adopt and implement the "Transportation Conformity Procedures for Minnesota: A Handbook for Transportation and Air Quality Professionals," (Handbook) prepared by the Minnesota Interagency Air Quality and Transportation Planning Committee.

Additional background material is attached.

ROUTING

TO	ACTION REQUESTED	DATE COMPLETED
TAC Planning Committee	Review & Recommend	August 13, 2009
Technical Advisory Committee	Review & Recommend	September 2, 2009
TAB Policy Committee	Review & Recommend	September 16, 2009
Transportation Advisory Board	Review & Recommend	September 16, 2009
Metropolitan Council	Review & Adopt	

390 Robert Street North St. Paul, Minnesota (651) 602-1728 Fax (651) 602-1739

MEMORANDUM OF AGREEMENT

Between the

Federal Highway Administration (Minnesota Division)

Federal Transit Administration (Region 5)

Metropolitan Council

Metropolitan Interstate Council

St. Cloud Area Planning Organization

Minnesota Department of Transportation

and the

Minnesota Pollution Control Agency

This Memorandum of Agreement (MOA) is hereby entered into by and between the Federal Highway Administration; Federal Transit Administration; Metropolitan Council; Metropolitan Interstate Council; St. Cloud Area Planning Organization; Minnesota Department of Transportation; and the Minnesota Pollution Control Agency, hereinafter collectively referred to as the "Parties".

Purpose

The purpose of this MOA is to provide a means for the Parties to formally adopt and implement the "Transportation Conformity Procedures for Minnesota: A Handbook for Transportation and Air Quality Professionals," (Handbook) prepared by the Minnesota Interagency Air Quality and Transportation Planning Committee.

The Handbook, as attached, is to be used for determining the conformity of the Minneapolis-St. Paul, Duluth-Superior, and St. Cloud Metropolitan Area Transportation Plans and Transportation Improvement Programs with the State of Minnesota's air quality plans and procedures.

Together with the Handbook, this MOA constitutes the Transportation Conformity State Implementation Plan (SIP) for the State of Minnesota, as required by the Clean Air Act.

This Memorandum of Agreement defines the practices and procedures the parties intend to follow in determining transportation conformity.

Background

The Clean Air Act Amendments of 1990 require that each state develop a plan to assure that federally supported transportation projects, programs, and plans conform to the state air quality implementation plans (SIPs) required under section 110 of the Act.

Conformity applies to areas that are designated nonattainment and those redesignated to attainment after 1990 (''maintenance areas'' with plans developed under Clean Air Act section 175A) for several transportation-related criteria pollutants. Minnesota currently is subject to conformity only in three maintenance areas for

carbon monoxide (CO). Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations.

The EPA issued transportation conformity rules in 1993, and has subsequently amended those rules in 1995, 1997, 2005, and 2008. The transportation conformity rules are codified at 40 CFR §93. Provisions related to conformity SIPs are found in 40 CFR §51.390.

The most recent changes to the transportation conformity rules, promulgated on January 24, 2008 (73 FR 4420), make the rule consistent with Clean Air Act section 176(c) as amended by the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) on August 10, 2005 (Pub. L.109–59).

Under the 2008 amendments, states are required to address in their SIPs only three specific portions of the federal conformity rule:

- 40 CFR §93.105, which addresses consultation procedures;
- 40 CFR §93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR §93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments

All other portions of the federal conformity rule remain in effect, though states are, in general, no longer required to submit conformity SIP revisions that address the other sections of 40 CFR §93.

Roles and Responsibilities

The Minnesota Interagency Air Quality and Transportation Planning Committee consists of representatives from the Parties, and is responsible for development and updating of the Handbook and conducting interagency consultation;

The Metropolitan Council (Council) is the regional transportation planning agency for the Minneapolis-St. Paul Metropolitan Area pursuant to Government Code § 66500 et seq;

The Metropolitan Interstate Council (MIC) is the regional transportation planning agency for Duluth-Superior pursuant to Government Code § 66500 et seq;

The St. Cloud Area Planning Organization (APO) is the regional transportation planning agency for the St. Cloud Metropolitan Area pursuant to Government Code § 66500 et seq;

The Minnesota Pollution Control Agency (MPCA), Minnesota Department of Transportation (Mn/DOT) and Met Council, MIC, and APO are collectively responsible for developing and implementing various portions of the state air quality plans in the in the above stated metro areas;

Prior to adopting or amending the long-range transportation plans and Transportation Improvement Programs (TIPs), Met Council, MIC, and APO (collectively known as the Metropolitan Planning Organizations or MPOs) must first determine that these plans and programs conform to the federally approved state air quality plan (the State Implementation Plan or SIP) for their respective metropolitan areas using procedures established by the U.S. Environmental Protection Agency; and

The Parties have prepared the Handbook for determining transportation air quality conformity in compliance with Federal and State regulations and the Handbook includes certain conformity procedures relating to

transportation plans, programs, and projects and the interagency consultation procedures.

The Parties agree to:

1. Recognize and agree that, through this MOA, the attached Handbook has full legal effect as the Transportation Conformity State Implementation Plan (SIP) for the State of Minnesota;

2. Implement the processes and procedures in the Handbook within the designated metropolitan areas, in compliance with the Clean Air Act Amendments of 2000, the U.S. Environmental Protection Agency's Conformity Rule, and consistent with the planning provisions of the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

3. Review the Handbook periodically and amend it if it is determined that changes to conformity procedures are necessary. Changes to the Handbook will be made with the approval of the signatories, or their representatives, to this MOA. An amended and signed MOA will formally implement revisions to the Handbook.

General Provisions

A. This agreement is not intended to, nor shall it, vest any rights in persons who are not parties to this agreement. The obligations and responsibilities contained in this agreement 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.

B. Modification of this agreement must be in writing and upon approval of the Parties to the agreement.

C. If a Party intends to withdraw from this agreement, such withdrawal must be in writing with at least thirty (30) days advance notice.

D. This agreement may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original agreement. The date of execution shall be the date of the last Party's signature.

IN WITNESS WHEREOF, the parties to this agreement 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 Metropolitan Council:

_____ _____

Tom Weaver, Regional Administrator Date

For Metropolitan Interstate Council:

_____ _____

Ron Chicka, Director Date

For St. Cloud Area Planning Organization:

_____ _____

Scott Mareck, Executive Director Date

For Minnesota Department of Transportation:

_____ _____

Thomas Sorel, Commissioner Date

For the Minnesota Pollution Control Agency:

_____ _____

Paul Eger, Commissioner Date

TRANSPORTATION CONFORMITY PROCEDURES FOR MINNESOTA:

A Handbook for Transportation and Air Quality Professionals

Prepared By

The Minnesota Interagency
Air Quality & Transportation Planning Committee

June 29, 2009 Draft

TABLE OF CONTENTS

DEFINITIONS

- **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 and 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.
- **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
- **Mn/DOT** - 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
- **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 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.

- **St. Cloud Area Planning Organization (APO)** – Regional transportation planning agency and MPO for the St. Cloud Metropolitan Area

- **STIP** – State Transportation Improvement Program – A compendium of TIPs for the whole state which is supposed to match the MPO's TIP. 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 staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan plan, and developed pursuant to 23 CFR Part 450.

- **Transportation Plan** – A long-term comprehensive plan created by a MPO, required by federal law, which contains long-term policies to guide future travel and air quality.

I. INTRODUCTION

Purpose of the Handbook

This handbook was developed jointly by the agencies responsible for transportation conformity in Minnesota, by the Interagency Air Quality & Transportation Planning Committee, hereafter referred to as the Interagency Committee. The purpose of this handbook is to clearly document the roles, responsibilities, major steps and procedures of transportation conformity.

The focus of the handbook is on actions taken by each MPO in development of **three products**:

- The Metropolitan Planning Organization (MPO) **Transportation Plan** and conformity determination for the entire non-attainment or maintenance area, including areas that might be outside the MPO boundary;
- The MPO **Transportation Improvement Program** (TIP) and conformity determination for the entire non-attainment or maintenance area, including areas that might be outside the MPO boundary; and
- Conformity analyses as documented in **Transportation Project Environmental Documents.**

A key emphasis of the procedures is on interagency consultation, pursuant to the requirements of 40 CFR §93.105. The lead agency, as identified in this Handbook, responsible for each of the documents and processes is also responsible for ensuring timely and meaningful interagency consultation. As used here, "consultation" means that the lead agency confers with other affected agencies through the Interagency Committee, provides information to appropriate agencies, solicits early and continuing input from those agencies, and before taking any action, considers that input and responds to those views in a timely, substantive manner.

An example of statewide interagency consultation is the screening process for "hot spot" or intersection analysis, which applies to all non-attainment and maintenance areas. The partner agencies that make up the Interagency Committee have worked on this effort jointly over several years. An example of issues affecting an individual MPO include development of the TIP, a long-range transportation plan (Plan), and the respective conformity analysis and documentation. Each MPO is responsible for leading those efforts in its jurisdiction, and for ensuring that early and frequent consultation with other affected agencies on TIP and Plan development take place.

This handbook is intended primarily for transportation and air quality professionals responsible for transportation conformity. It is expected that the handbook will be reviewed periodically by the Interagency Committee to assess the need for changes, additions or improvements to the conformity process. It is anticipated that changes will be needed only if changes are made to the federal requirements for transportation conformity.

This handbook does not replace other rules on conformity procedures as promulgated by the EPA, but rather supplements those rules with additional detail and resources.

Overview of Transportation Conformity

Transportation conformity is required under Section 176(c) of the Clean Air Act to ensure that federally supported transportation activities are consistent with ("conform to") the purpose of the SIP. Transportation activities include transportation plans, transportation improvement programs (TIPs), and federally funded or approved highway or transit projects or other activities. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS).

Transportation conformity requirements are found in 40 CFR Part 51, Subpart 51, Subpart T and Part 93, Subpart A. Transportation conformity applies in nonattainment and maintenance areas for the following transportation-related criteria air pollutants: ozone, particulate matter ($PM_{2.5}$ and PM_{10}) carbon monoxide (CO), and nitrogen oxide (NO_2). In Minnesota CO is the pollutant subject to conformity requirements; CO is the only transportation-related pollutant for which Minnesota has ever had a non-attainment area. On a regular basis, an MPO may decide to undertake transportation projects, such as changes to highways, bridges, streets, or other projects that affect traffic flow. Changes to traffic flow affect vehicle pollutant emissions; it must be determined if these projects conform to the state's air quality plans and goals and are consistent with Minnesota's SIP.

Background

The Clean Air Act Amendments of 1990 require transportation conformity in non-attainment and maintenance areas. Conformity is the process that links transportation planning to the SIP to reduce emissions and bring (or keep) the area in compliance with ambient air quality standards. Conformity determinations are required for transportation plans, TIPs and federally funded or federally approved transportation projects. In Minnesota, maintenance areas for carbon monoxide (CO) exist in and near the Twin Cities, St. Cloud and Duluth metropolitan areas. The term "maintenance area" refers to any area that EPA previously cited as not meeting CO standards, but now legally recognizes as attaining these standards. Maintenance areas must continue to demonstrate that they will meet the standards.

In Minnesota, the lead agencies for transportation planning in air quality maintenance areas are the St. Cloud Area Planning Organization (St. Cloud), the Metropolitan Interstate Council (Duluth) and the Metropolitan Council/Transportation Advisory Board (Twin Cities). See Appendix A for a description and maps of each maintenance area.

The Conformity Rules of 1993, as amended in 1995, 1997, 2004 and 2008, lay out the technical and procedural requirements of conformity determinations and require states to develop their own conformity procedures as part of their SIP. Prior to the 2005 Safe Accountable Flexible Efficient Transportation Equity Act - a Legacy for Users (SAFETEA-LU), states were required to address all the Federal Rule's provisions in their conformity SIPs. Most of the sections of the Federal Rule were required to be copied verbatim from the Federal Rule into the state's SIP. Under SAFETEA-LU, states are only required to address and tailor three sections of the Federal Rule, making modifications as appropriate to each state's circumstances. The three required SIP elements are:

- Consultation procedures (40 CFR §93.105);
- Written commitments to control measures that are not included in an MPO's plan and TIP which must be obtained prior to a conformity determination (40 CFR §93.122(a)(4)(ii)); and
- Written commitments to mitigation measures which must be obtained prior to a project level conformity determination (40 CFR §93.125(c)).

In Minnesota, the transportation conformity SIP takes the form of a Memorandum of Agreement (MOA) between the member agencies of the Interagency Committee incorporating this handbook's requirements. Language developed by the Interagency Committee and finalized by the MPCA forms the basis of the conformity procedures.

Roles & Responsibilities for Transportation Conformity

- **EPA** – Reviews Plans and TIPs and provides comments on conformity analysis to FHWA/FTA; provides guidance on conformity criteria and procedures; approves updated motor vehicle emission models; approves SIP revisions.
- **FHWA –** Makes final joint FHWA/FTA conformity determination on Plans, TIPs and projects; provides EPA with copies of documents for their review; provides guidance and assistance to each MPO to help fulfill conformity requirements. In area of conformity, FTA Region 5 has delegated most of its responsibility to FHWA via a memorandum of understanding dated July 14, 2004, but all findings are joint from both agencies.
- **FTA –** In area of conformity, FTA Region 5 has delegated most of its responsibility to FHWA via a memorandum of understanding dated July 14, 2004, but all findings are joint from both agencies.
- **Minnesota Interagency Air Quality & Transportation Planning Committee (Interagency Committee)** – Provides a forum for exchange of information and consultation among agencies on air quality issues; reviews procedures handbook for possible changes; evaluates and selects models and methods for hot spot analysis.
- **Mn/DOT** – Helps each MPO develop Plans and TIPs; reviews and comments on MPO Plans and TIPs; approves TIPs as Governor's designee for inclusion in the State TIP; and provides guidance to each MPO to help fulfill conformity requirements.
- **MPCA** – Develops SIP revisions, emissions inventory and/or emissions budget; initiates consultation on same; provides information and guidance on attainment status and schedules; assures adequacy of new or revised TCMs and submits to EPA; helps MPOs develop Plans, TIPs and TCMs by providing guidance; comments on whether Plans and TIPs meet conformity requirements; and provides guidance to MPOs to help fulfill conformity requirements.
- **MPO** – Each MPO performs transportation planning in the non-attainment and maintenance areas in its jurisdiction; initiates and carries out the consultation process on the Plan, TIP and conformity analysis; makes conformity determinations; conducts the public participation process; and develops Transportation Control Measures (TCMs). Working groups for each MPO carry out additional activities, such as concurring on project categories for air quality analysis and developing definitions of regionally significant projects.
- **Project Applicant** – Conducts any project-related air quality analysis and documentation as part of the transportation project development process.

II. MAJOR CONFORMITY PROCEDURAL STEPS IN LONG-RANGE TRANSPORTATION PLANS & TRANSPORTATION IMPROVEMENT PROGRAMS (MPO is Lead Agency)

The MPO in each non-attainment or maintenance area must prepare a long-range transportation plan (Plan) every four years. Each MPO must also develop a Transportation Improvement Program (TIP) at least every four years, though these are generally prepared annually in Minnesota. Both the Plan and the TIP must have a conformity determination before they are adopted. Each MPO is responsible for developing the TIP and the Plan, and for ensuring that early and frequent consultation on the TIP and Plan development with other affected agencies takes place. The following are the major steps in that process, as illustrated by the flowchart on the next page.

1. Develop schedule

Activities

- MPO consults with MPCA, Mn/DOT, FHWA, EPA and local agencies.
- MPO provides a copy of the proposed conformity schedule to MPCA, Mn/DOT, FHWA, and EPA.
- MPO provides any subsequent revisions to the schedule to MPCA, Mn/DOT, FHWA, and EPA as soon as these are available.

Notes

The first step in the conformity process is for the MPO to agree on the format of the analysis with the MPCA, including agreed upon text for those subjects that are covered each time. In addition, consultation at this early stage could identify any significant omissions or errors and facilitate the later, more formal review which these two agencies must conduct. The MPO must consult with the MPCA and Mn/DOT prior to developing the final draft of the conformity analysis.

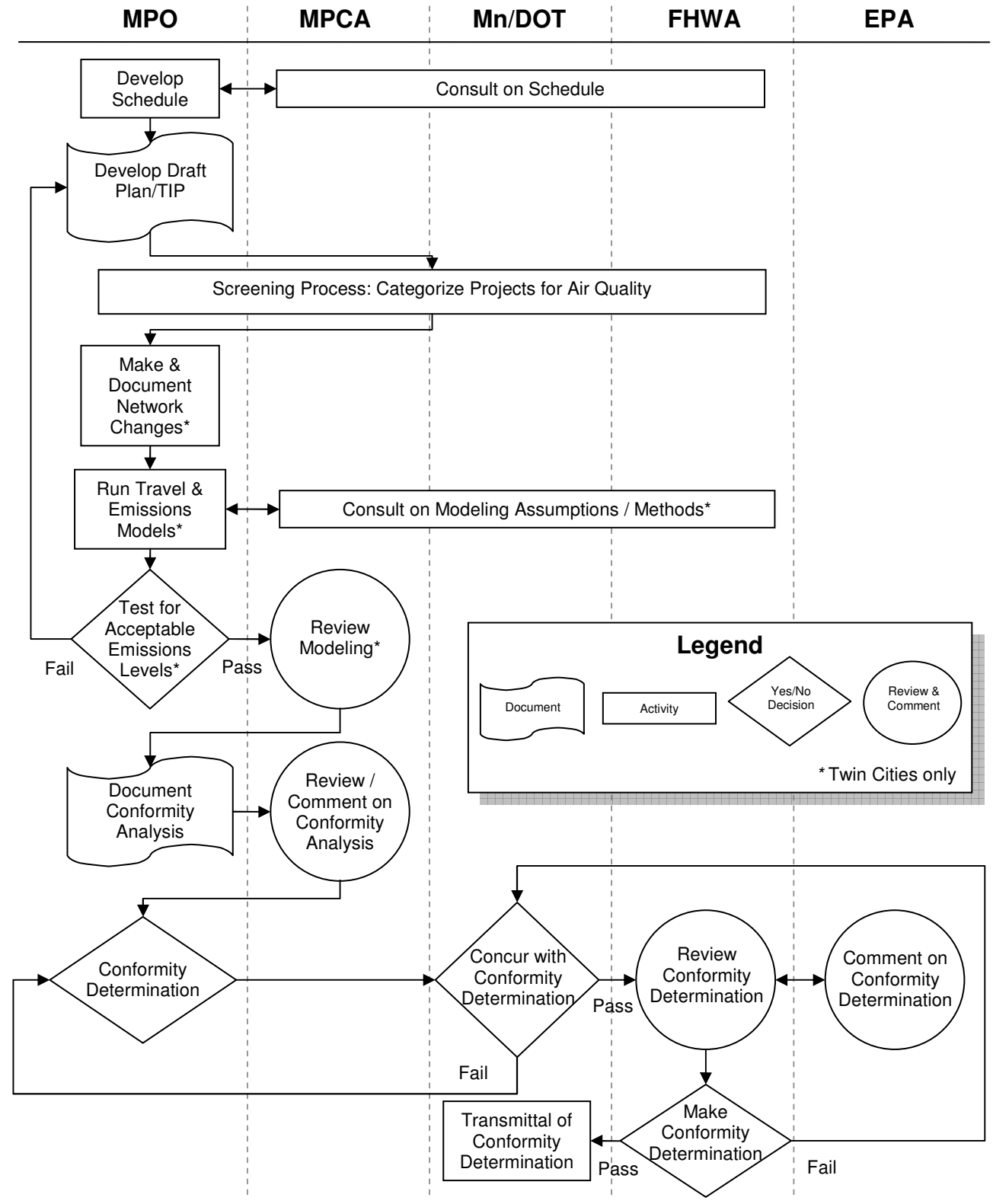
The next step is for the MPO to work up a final draft of the conformity analysis. The MPO is to submit the draft to MPCA, allowing the MPCA sufficient lead time to review the document, and enough review time to consult with the Parties involved in inter-agency consultation. Typically, the MPO should give MPCA, Mn/DOT, and FHWA at least two weeks of review time for draft documents.

Each MPO making a conformity determination on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment. At a minimum, this process should include providing reasonable public access to technical and policy information considered by the MPO, and a 45-day comment period prior to taking formal action on conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR 450.316(a).

After receiving comments on the draft conformity determination from the MPCA, the MPO is to incorporate MPCA comments as appropriate into the public review draft of the Plan or TIP, or respond to the MPCA's comments as part of the materials available to the public at the start of the 45-day public comment period. The MPO must make available to the public the Plan or TIP and conformity analysis at the start of the public comment period. The MPCA's comment letter with conformity analysis document must also be included and made available to the public to view.

The Twin Cities area must conduct a regional emissions analysis as part of its conformity determination. This requirement adds both complexity and preparation time to the approval process for its Plan and TIP. In contrast, the Duluth and St. Cloud areas are not required to perform regional emissions modeling.

Transportation Plan / TIP Conformity Process for MPO Maintenance Areas



2. Develop Plan/TIP

Activities

- MPO consults with agencies in developing draft documents, including:
  - Development of policies, goals, objectives and strategies
  - Development and evaluation of alternatives as necessary
- MPO establishes a work group, as appropriate, for development of the Plan or TIP, and invites MPCA, Mn/DOT and FHWA to participate
- MPO prepares draft documents and provides for review and comment
- MPO makes presentations as appropriate
- MPO prepares final documents and circulates copies

Notes

Duluth and St. Cloud

MPO staff consults a subcommittee of the Interagency Committee consisisting of MPCA, Mn/DOT and FHWA staff at the early stages of the Plan or TIP development. MPO staff may wish to send draft chapters of the Plan or TIP to the MPCA for review as they are completed, however, the MPCA will provide its formal comments on the draft to be proposed to the MPO's Policy Board for public hearing. The MPO must notify MPCA, MnDOT and FHWA of changes between the draft and final documents.

Twin Cities

In the Twin Cities, the MPO develops the Plan and TIP after convening the appropriate members of the Interagency Committee that includes MPCA, Mn/DOT and FHWA. This subcommittee's role consists of providing guidance and consultation for the MPO's work effort. MPCA, Mn/DOT and FHWA are all members of the Technical Advisory Committee and Transportation Advisory Board of the Metropolitan Council, and are included on the MPO mailing lists and thus regularly receive copies of all MPO mailings.

In development of the Plan and prior to adoption, the MPO will evaluate the proposed transportation system(s) for each of the analysis years used in the conformity analysis. This evaluation will be conducted to determine the ability of each alternative to maintain air quality standards.

The Twin Cities TIP includes all projects funded with FHWA and FTA funds, as well as state trunk highway projects and other regionally significant projects.

Plan/TIP Changes and Plan /TIP Amendments

If the MPO proposes to add or subtract regionally significant projects in the proposed TIP or Plan after the MPCA reviews the document in the final draft form proposed for the start of the public comment period, then the MPO must revise its schedule to allow additional MPCA review and comment. The MPO can make changes, even those that affect the regional emissions analysis, as a result of comments through the public comment period, but the MPO must build additional time into its adoption schedule for additional MPCA review and comment. The addition of regionally significant projects either after the completion of the public comment period, or the amendment of an adopted Plan or TIP requires conformity analysis by the MPO, but may not require a new formal public comment process.

In the Twin Cities, for transportation/air quality conformity purposes of starting or re-starting a formal public comment process, the Interagency Air Quality Committee has concluded that a significant amendment is:

- The addition or deletion of a project which changes modeled total regional emissions by more than 1% of the previously modeled build alternative, or brings total regional emissions to within less than 10% of the emissions budget cap; or
- Changes which result in a negative impact on an existing implemented or proposed Transportation Control Measure.

Either of these conditions would require that the MPO extend the public comment period before completing the conformity determination or final adoption of the TIP or Plan. In addition to these air quality considerations, the MPO's public participation process may include additional conditions that determine when a public comment period should be started.

3. Identify/categorize projects for air quality analysis purposes

Activities

- The MPO, MPCA, Mn/DOT, EPA, and FHWA use the lists of exempt projects from the conformity rules (40 CFR §93.126 and 40 CFR §93.127 – see Appendix B) to review projects and determine which of the following air quality categories is appropriate for each project*:*
    - Exempt
    - Project level analysis may be required
    - Regionally significant (modeled in the Twin Cities, qualitative analysis in Duluth and St. Cloud).
- The MPO describes the categories in Plan or TIP documents using an agreed upon set of exemption codes (see Appendix B).

Identification and categorization of projects can take place either in person, by mail, email or telephone. In the Twin Cities and St. Cloud, the MPO typically arranges a face-to-face meeting with MPCA, Mn/DOT, and FHWA and provides project lists to them prior to the meeting. In Duluth, the MPO staff sends project lists to MPCA for review and concurrence on categorization. Although project level conformity is not part of the Plan or TIP conformity process, this is a convenient time for MPCA staff with knowledge of conformity requirements to identify in the Plan or TIP those projects which may need project level (hot-spot) analysis during the environmental documentation process.

Regionally significant projects must be included in the emissions analysis for the Plan or TIP.

The EPA Transportation Conformity Rules (§93.101) include the following definition of regionally significant projects:

> *Regionally significant project means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.*

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.

The Metropolitan Council models and analyzes projects included in the Twin Cities transportation plan for air quality purposes when it adopts the plan and makes a conformity determination. A new conformity determination is required if scope or timing of projects change significantly or if modeling methods change, as determined through interagency consultation. Smaller projects not specifically included in the Plan, such as local federally funded projects selected by the MPO, must be categorized for air quality and modeled if found to be regionally significant projects

4. Emissions Modeling in the Twin Cities Area

A. Develop modeling assumptions/methods and input data for regional emissions modeling

Activities

- MPO, MPCA, EPA, FHWA and Mn/DOT consult on appropriate analysis years and other inputs for regionally significant projects.
- MPO, MPCA, EPA, FHWA and Mn/DOT consult on methods and outcomes for inclusion of emissions resulting from projects in maintenance areas outside the MPO boundaries.
- The MPO must use the latest EPA-approved emissions model. MPO, MPCA and EPA consult on modeling assumptions for emissions models.
- MPO obtains project-specific data on regionally significant non-Mn/DOT projects.
- Mn/DOT provides project-specific data on Mn/DOT projects, including projects in the maintenance area but outside the MPO boundary, to Twin Cities MPO staff so that regional impact can be determined for significant projects.

B. Model Regional Emissions

Activities

- MPO codes the highway and transit networks based on data provided by Mn/DOT or the project proposer for proposed projects in the Plan or TIP for various analysis years.
- MPO uses regional highway travel forecasts as input to emissions modeling.
- MPO runs the model to obtain carbon monoxide emissions factors for the region and calculate daily pollutant emissions in tons per day.

Notes

- Analysis years must be consistent with the motor vehicle emissions budget.
- Last analysis year must be the last year of the transportation plan.
- Analysis years must be no more than ten years apart.
- Travel demand forecasts are based on the most recent socio-economic data prepared by the MPO.
- Wright County projects are evaluated and the emissions associated with regionally significant projects are added to the 7-county metro area total.

C. Review Model Results

Activities

- MPO sends results and documentation to MPCA staff for preliminary review.
- MPCA staff reviews for accuracy and appropriateness of methods; sends informal comments back to MPO staff.
- MPO staff makes appropriate changes to modeling and/or documentation, including re-running the model as necessary and documenting the process and results; sends back to MPCA staff for review.

5. Document conformity analysis

Activities

- MPO[1] staff documents conformity analysis, using format agreed to by MPCA staff; makes changes and updates by adding appropriate new text for the current analysis.
- MPO staff sends conformity documentation to MPCA, Mn/DOT, and FHWA staff for preliminary review.
- MPCA, Mn/DOT, and FHWA staff review preliminary draft, send informal comments to MPO.
- MPO, MPCA, Mn/DOT and FHWA staff consult to review and discuss comments
- MPO staff incorporates suggested changes as appropriate.
- MPO staff develops final draft Plan or TIP conformity analysis documentation, sends to MPCA for formal review.
- MPCA reviews and comments in formal comment letter to MPO which is made part of the public comment package.

Notes

In the conformity documentation, the MPO should include the following elements (based on MOU between FHWA, FTA and EPA *Coordination Procedures for the Processing of Air Quality Conformity Determinations*):

- The revised or updated Plan, and/or the new or amended TIP;
- For new TIP submittals, the project progress monitoring information required under 23 CFR §450.324(n);
- A resolution by the policy body of the MPO adopting the Plan and/or TIP and making a determination that the technical analysis supports a finding of conformity with the 1990 CAAA;
- Evidence of consultation with the State air quality agency or of compliance with the Conformity SIP's "State consultation procedures";
- Documentation of the public participation process undertaken by the MPO as well as public comments and MPO responses; and
- The conformity analysis technical report containing the following (Twin Cities only):
    - Identification of the projects exempted from and those subjected to the conformity analysis under each scenario for each of the analysis years;
    - Documentation of the assumptions made (i.e. flag settings) for the EPA-approved emissions model including sample input/output printouts;
    - Description of the travel demand model used and its geographic and highway functional classification coverage;
    - A tabulation of the analysis results (calculated emissions of VOC, NOx and CO, as applicable) for each analysis year and analysis scenario, and showing that the required conformity tests were met
    - If off-model emission credits are needed to demonstrate conformity, provide a list of the projects analyzed and corresponding credits. Include a description of how the credits were calculated.

The conformity documentation should follow the appropriate TIP or Plan checklists for conformity, as found in Appendices C & D.

As required by 40 CFR § 93.122(a)(4)(ii), if control measures not included in the MPO Plan or TIP are necessary in order to make a conformity finding, the MPO will ensure that written commitments to those controls measures have been made by the appropriate entity, and provide appropriate documentation.

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[1] The Metropolitan Council prepares conformity documentation for Wright County and the City of New Prague, as the Metropolitan Council is the MPO for the adjacent seven county Twin City metropolitan area.

6. Make conformity finding

Activities

- The MPO:[2]
    - Reviews Plan or TIP conformity documentation;
    - Makes the draft Plan or TIP available for public comment;
    - Reviews MPCA comments and public comments;
    - Makes a formal conformity determination on the Plan or TIP through a resolution of the MPO body; and
    - Sends the Plan or TIP to Mn/DOT.
- Mn/DOT accepts the Plan or TIP and sends them to FHWA and FTA for action.
- FHWA sends the Plan or TIP and conformity documentation to EPA for comment.
- EPA provides comments to FHWA on the conformity process and results.
- FHWA:
    - Reviews the MPO conformity determination,
    - Reviews MPCA, EPA, and public comments, and
    - Makes a final conformity determination on the Plan or TIP through a joint FHWA/FTA letter within a week of receipt of EPA's comment letter. The date of this letter is the official date of the final conformity determination on the Plan or TIP.

[2] In Wright County and the City of New Prague, conformity finding is made by the Metropolitan Council as the adjacent MPO.

III. MAJOR STEPS IN PROJECT-LEVEL CONFORMITY (Project Applicant is Lead Agency)

This section applies to federally funded transportation projects. The project proposer must document conformity-related information, as required, in the appropriate project development/environmental document [Project Memorandum, Environmental Assessment (EA), Environmental Impact Statement (EIS)]. The flow chart on the next page illustrates the project-level conformity process.

1. Identify project as to conformity requirements

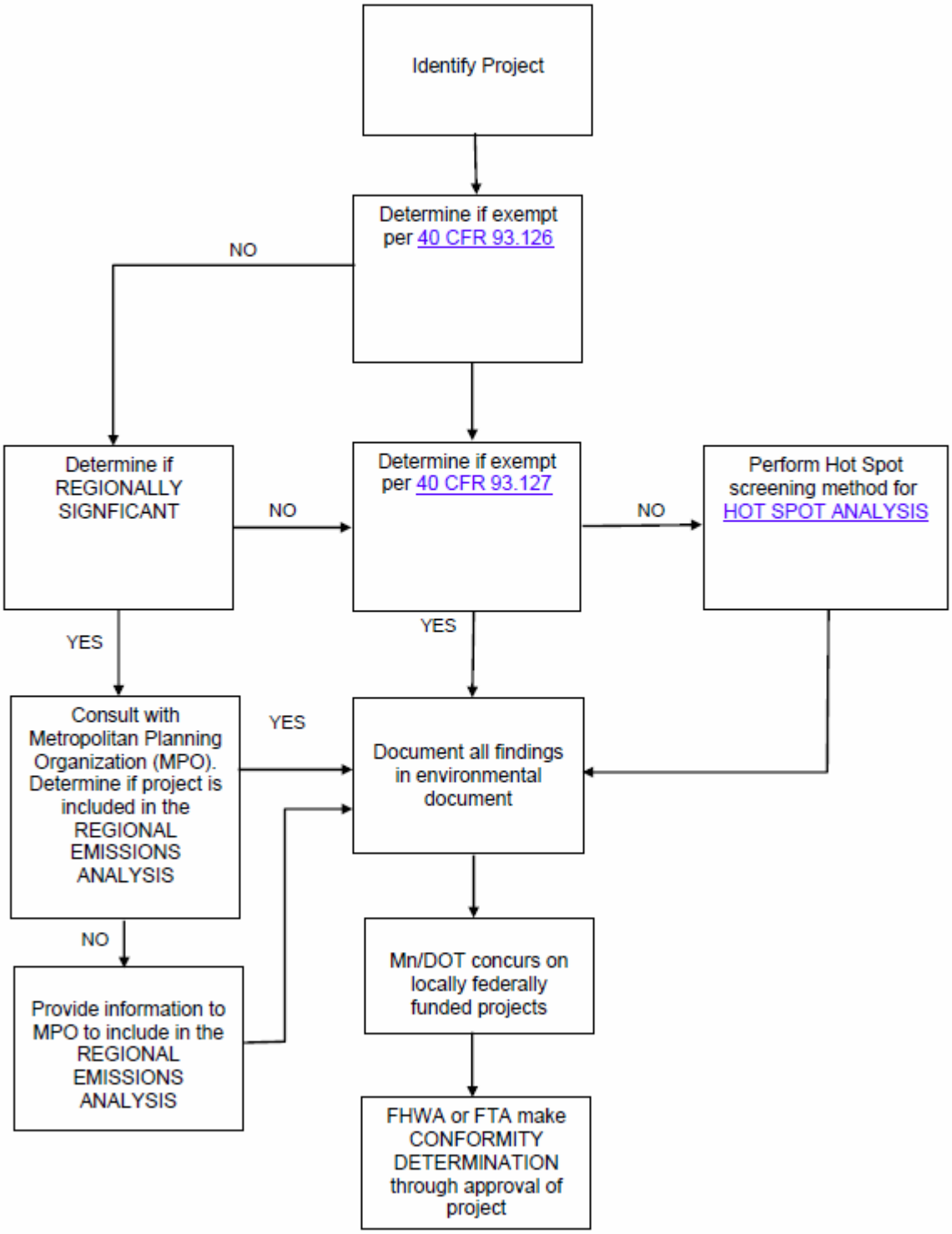
Activities

- Consult Plan or TIP in which project is listed; note conformity category.
- If project is not specifically identified in Plan or TIP, contact MPCA or MPO.
- If project is identified as "exempt" from all conformity requirements, proceed to Major Step 4.

Notes

Federal regulations require that a TIP be developed at least every four years. However, the MPOs in Minnesota have generally chosen to revise their TIP every year. Each year when the TIP is developed, the MPO, MPCA and Mn/DOT consult to determine the appropriate category of new projects for conformity purposes. This is done to determine the regionally significant projects to be included in the regional model (in the Twin Cities), but also as a future reference for project managers as to whether a project needs a conformity determination, and if so, if a regional analysis and/or hot-spot analysis is required.

PROJECT LEVEL CONFORMITY – TWIN CITIES



2. Consult with MPO for regionally significant projects (Twin Cities only)

Activities

- Determine if project is included in most recent MPO regional emissions analysis.
- If project is not included, provide MPO with project data (termini, general alignment, access points, lane quantities, facility type) so MPO staff can perform regional emissions analysis.
- Obtain results of a regional emissions analysis including proposed project in project documentation.

Notes

There are two possible components to project-level conformity: regional conformity analysis and hot spot, or localized conformity analysis.

Regional Conformity Analysis

Regional conformity analysis deals with the overall effects of the proposed project in relation to regional emissions of the metropolitan region, i.e. whether regional emissions will remain within standards with the inclusion of the project. Regional conformity analysis is required for projects that are considered "regionally significant." See the definition of "regionally significant" or Section II.3 of this Handbook for further information on regional significance. In many instances, a regionally significant project will already be included in the regional emissions analysis before it appears in the four-year Transportation Improvement Program, since all regionally significant projects in the long range plan are included in the regional emissions analysis. In that case, a project proposer must verify with the MPO that the project is included in the regional analysis, and indicate so in the environmental document being prepared for the project (EA or EIS). Suggested language for such an instance follows under Step 4.

A project would not be included in the Transportation Plan or the regional emissions analysis if it is a project on the minor arterial system that is being expanded, consistent with the Plan policies but not of sufficient scope to be included individually in the Plan as a major project. In that case, the project proposer must provide project data to the MPO staff (termini, general alignment, access points, lane quantities, facility type) so MPO staff can add the project to the regional transportation model and run the travel and emissions models with the added features of the project. Appropriate language must be included in the environmental document.

3. Conduct hot-spot screening process for hot spot analysis for projects

Activities

- For projects that require localized, or "hot spot" analysis, refer to the Hot Spot Screening Process flow chart below.
- Compare project to "worst" ten intersections in Twin Cities area on the figure shown on page 19.
- If proposed project is not one of the worst intersections, does not affect the intersections, and does not have higher average daily traffic levels than the AADT benchmark, (see Table on page 19), proceed to document that fact.
- If the project is one of these intersections, use the results of the hot spot analysis already conducted.
- If the project affects one of these intersections or has higher average daily traffic levels than the AADT benchmark, conduct a hot spot analysis (contact Mn/DOT Office of Environmental Services).

Notes

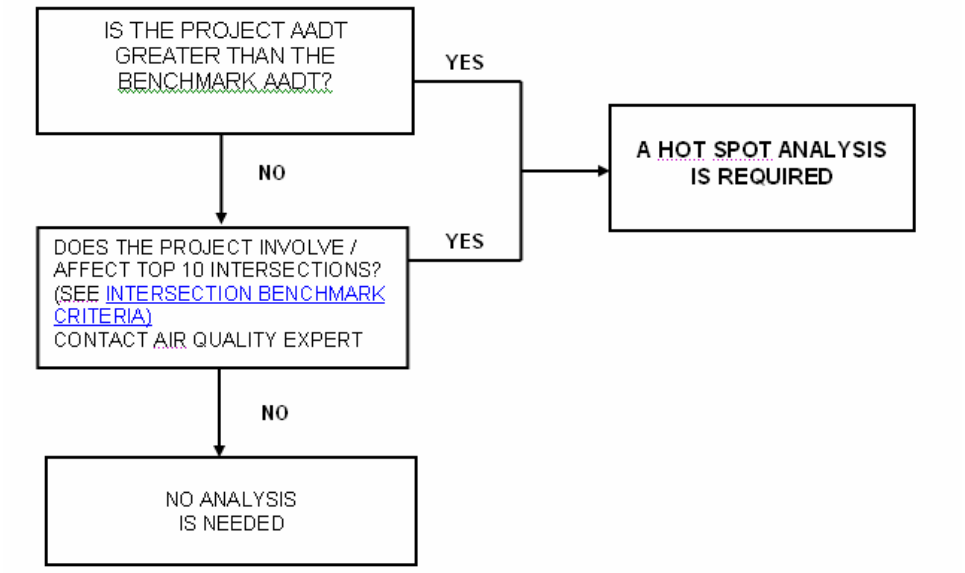
Hot-Spot Analysis

The applicant may have to perform a hot-spot analysis if the project is among the categories described in 40 CFR §93.127 as exempt from regional emissions analysis but possibly subject to hot spot or localized analysis. Even if a project is regionally significant and subject to regional analysis, it may also be subject to hot-spot analysis (e.g. signalized intersections within a project that adds a travel lane for more than a mile). If the project is not exempt (for instance, a signalization project) and is at Level of Service (LOS) D or below, it would normally be subject to a hot spot analysis under the Conformity Rule.

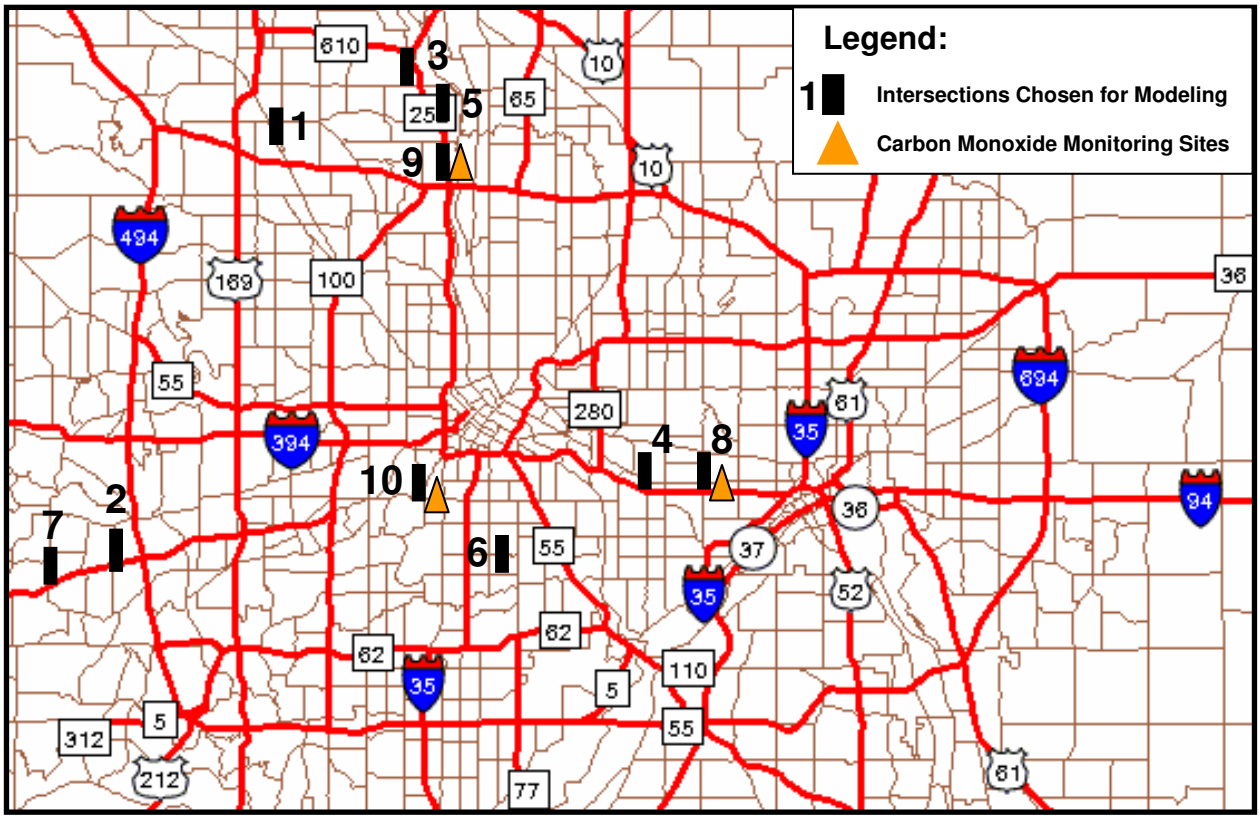
However, EPA has approved a screening method for Minnesota whereby each potential hot spot project is compared to a list of the worst intersections in a maintenance area (highest AADT and worst LOS). Each of these worst intersections has already been modeled and found to result in no violations of the CO standards. If the proposed project is not one of those intersections and does not affect one of these intersections, then it is presumed it will not cause any violations (since these worst-case conditions did not).

The project proposer must include this information in the project environmental document, with a statement that the project meets conformity requirements. FHWA/FTA must make a conformity determination on projects before project approval.

Hot Spot Screening Process



Location of Top Ten Intersections Analyzed for LOS



Intersection Benchmark Criteria

ID	Description	2007 AADT
Top Seven Locations		
1	TH 169 At CSAH 81	79,400
2	TH 7 at CSAH 101	66,600
3	TH 252 At 85th Ave.	66,800
4	University Ave. at Snelling Ave.	59,700
5	TH 252 at Brookdale Dr.	61,300
6	Cedar Ave. at County Road 42	75,100
7	TH 7 at Williston Rd.	54,900
3 MPCA Monitored Locations		
8	University Ave. at Lexington Ave.	59,700
9	TH 252 at 66th Ave.	72,500
10	Hennepin Ave. at Lake St.	37,000

Benchmark AADT: 79,400

4. Document results of conformity analysis in project environmental document

Activities

In accordance with 40 CFR §93.125(c), if the conformity finding relies on project-level mitigation measures, there must be a written commitment to said mitigation measures. They should be included in the project environmental document.

Using the information obtained through the steps outlined above, use the following suggested statements in the project document:

Suggested Language

Exempt project ***(Twin Cities, Duluth, St. Cloud):***

This project is exempt from EPA transportation conformity requirements based on 40 CFR 93.126, because it is a (e.g. bikeway project, AQ-2) and therefore no conformity analysis has been performed.

Regionally Significant Project and Hot Spot Required ***(Twin Cities only)***

The 1990 Clean Air Act Amendments require that State Implementation Plans (SIP) must demonstrate how states with nonattainment and maintenance areas will meet federal air quality standards. The EPA has designated all of Hennepin, Ramsey, Anoka and portions of Carver, Scott, Dakota, Washington and Wright counties as a maintenance area for carbon monoxide (CO). This area includes the project area, which is in ____ County.

The U.S. Environmental Protection Agency (EPA) issued final rules on transportation conformity (amended as 40 CFR 93 in 1999) which describe the methods required to demonstrate SIP compliance for transportation projects. These guidelines indicate that non-exempt transportation projects such as this project may need to be included in a regional emissions analysis to demonstrate the project would not increase regional CO emissions and would not increase the frequency or severity of existing violations. The regional analysis must be part of the metropolitan planning organization's long range plan and the three-year Transportation Improvement Program (TIP).

Accordingly, this project is consistent with the ____ (YEAR) Twin Cities Metropolitan Council's Transportation Policy Plan (TPP), and in the current (YEARS) Twin Cities TIP. This project is included in the transportation conformity section of the TPP and/or the TIP. The regional analysis shows that emissions are below the EPA-established emissions budget for the region. This project does not interfere with implementation of any transportation control measures included in the SIP.

The TPP was determined to conform to the requirements of the 1990 Clean Air Act (per 40 CFR 51 and 93) by the Federal Highway Administration and the Federal Transit Administration on ____ (DATE). A TIP conformity determination was made by those agencies on ____ (DATE). The project's design concept and scope are not significantly different from that used in the TIP and TPP conformity analyses.

As demonstrated by the above information, this project conforms to the requirements of the Clean Air Act Amendments and to the Conformity Rules, 40 CFR 93.

Regionally Significant Project and Qualitative Conformity Analysis Required *(Duluth and St. Cloud)*

The Clean Air Act Amendments of 1990 (CAAA) and the Environmental Protection Agency's (EPA's) 40 CFR §51 and §93 require *Conformity to State or Federal Implementation Plans for Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 U.S.C. or the Federal Transit Law* (hereinafter referred to as Conformity Rule). The provisions of the Conformity Rule apply in all non-attainment and maintenance areas for transportation related pollutants. In _____ (YEAR), the EPA designated the City(ies) of _____, which is (are) in _____ County(ies), as a maintenance area for Carbon Monoxide (CO).

Because the EPA determined that the CO violations were localized within the City(ies) of _____, regional emissions analyses were not required. However, for conformity determinations, future projects may necessitate a hot spot analysis. MPOs and the United States Department of Transportation (U.S. DOT) are required to make conformity determinations on Transportation Plans (Plan) and Transportation Improvement Programs (TIPs) before they are adopted, approved, or accepted. In addition, highway or transit projects, which are developed, funded, or approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must also be found to conform before they are approved or funded by the U.S. DOT.

The _____ YEAR) _____ (MPO) Plan was determined to conform with the requirements of the 1990 Clean Air Act by the FHWA and the FTA on _____ (DATE). A TIP conformity determination was made by those agencies on _____ (DATE). All plans, programs and projects within the _____ Metropolitan Area, but entirely outside the maintenance area are considered exempt from conformity determination.

Accordingly, the _____ project is included in the transportation conformity section of both the _____ (YEAR) _____ (MPO) Plan and the _____ (YEARS) TIP. Based upon a qualitative analysis completed during interagency consultation of the Plan and TIP, the _____ project is not expected to result in any increase in the frequency or severity of the existing CO emissions. The EPA made a determination of no adverse air quality impacts for the _____ project.

As demonstrated by the above information, this project conforms to the requirements of the CAAA and to the Conformity Rules.

Note: A hot spot analysis may still be needed even if a determination of no adverse air quality impacts is made and ultimate responsibility for determining the need for hot spot analysis for a project rests with Mn/DOT.

Hot-Spot Analysis (*Twin Cities*):

The proposed project fits one of the categories described in 40 CFR §93.127 as a project that may need a hot-spot analysis. A screening method submitted to U.S. EPA was used to determine the need for a hot-spot analysis. The results of that screening method demonstrate that the project does not need hot-spot analysis.

Hot Spot Analysis (*Duluth and St. Cloud*)

The proposed project fits one of the categories described in 40 CFR §93.127 as a project that may need a hot-spot analysis. Accordingly, a hot-spot analysis was performed, and the results are included here. The results demonstrate that the proposed project will not result in violations of the federal carbon monoxide standards.

Note: The Duluth and St. Cloud MPOs may also choose to use the screening method, but because of the few numbers of hot-spot analyses required in those areas, they have not chosen to do so at this time.

IV. COMMITMENTS

Commitments for Regional Emissions Analysis

In accordance with 40 CFR § 93.122(a)(4)(ii), Met Council, St Cloud APO, and MIC shall not include emissions reduction credits from control measures that are not included in the transportation plans, or TIPs, and do not require a regulatory action in the regional emissions analysis used in the conformity determination unless the Council, St. Cloud APO, and MIC obtain written commitments as defined in 40 CFR § 93.101 from the appropriate entities to implement those control measures. The written commitments to implement those control measures must be fulfilled by appropriate entities.

Commitments for Project-Level Mitigation and Control Measures

The written commitments to implement such a project-level mitigation or control measure must be fulfilled by the appropriate MPO, if applicable. Prior to making a conformity determination for the transportation plan or TIP, the Council, MIC, and/ or St. Cloud APO will ensure any project-level mitigation or control measures for which a written commitment has been made are included in the project design concept and scope and are appropriately identified in the regional emissions analysis used in the conformity analysis if applicable. Written commitments must be obtained before mitigation or control measures are used in a project-level hot-spot conformity analysis for a project-level determination.

V. CONFLICT RESOLUTION

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

1. The Minnesota Interagency Air Quality Transportation Planning Committee will prepare and agree to a statement of the nature of the conflict.

2. Staff of the affected agencies (MPCA, Mn/DOT, 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 Mn/DOT, 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, Mn/DOT and affected MPO representatives shall be considered to have resolved the conflict.

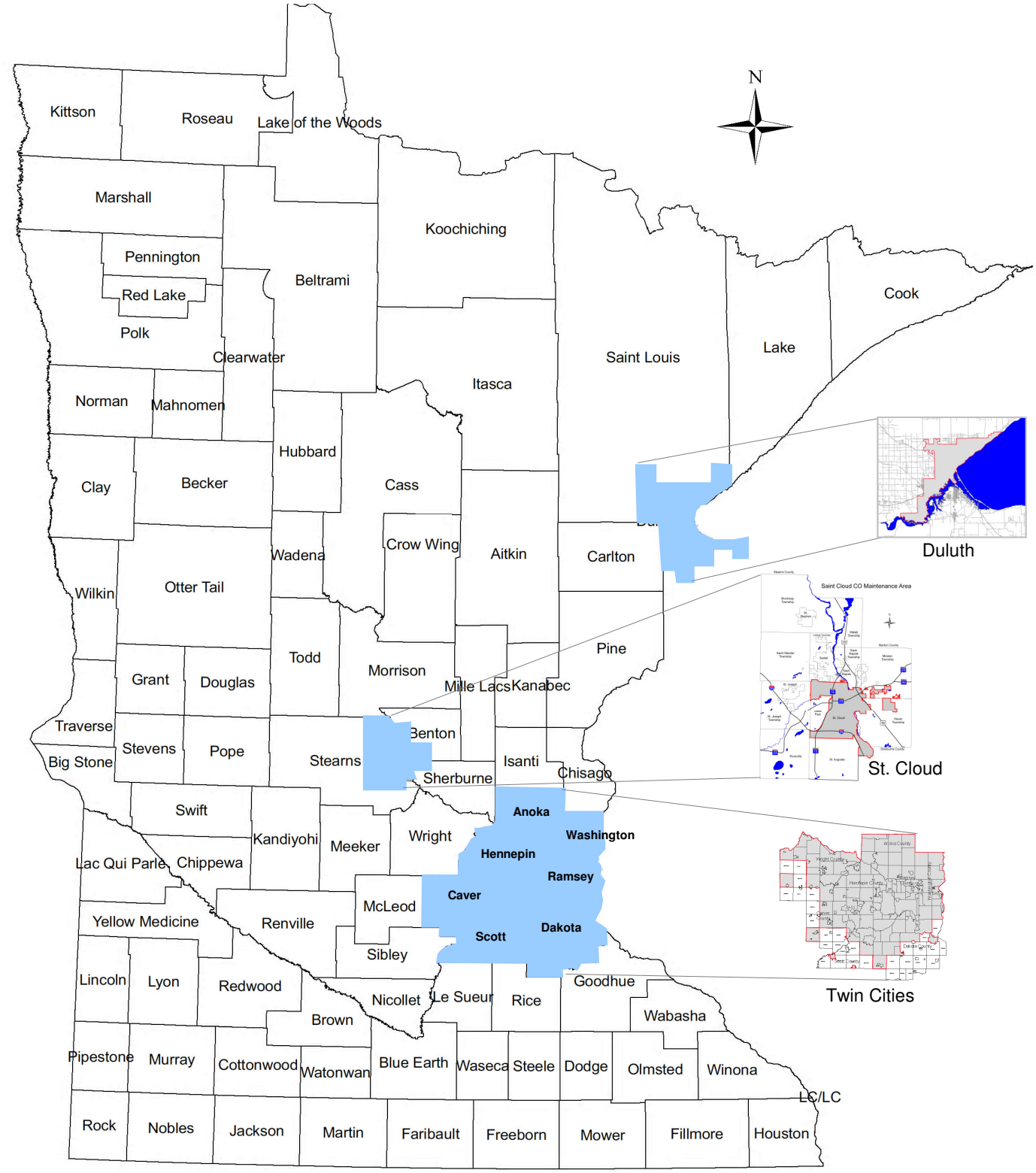
In step three, MPCA, Mn/DOT, and the affected MPO shall make every effort to resolve differences, including personal meetings between the heads of the MPCA, Mn/DOT, and the MPO or their policy-level representatives. After this process is completed (the parties have reached consensus or determined that consensus is not possible) Mn/DOT 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 (Mn/DOT or the MPO) plans to proceed with their 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.

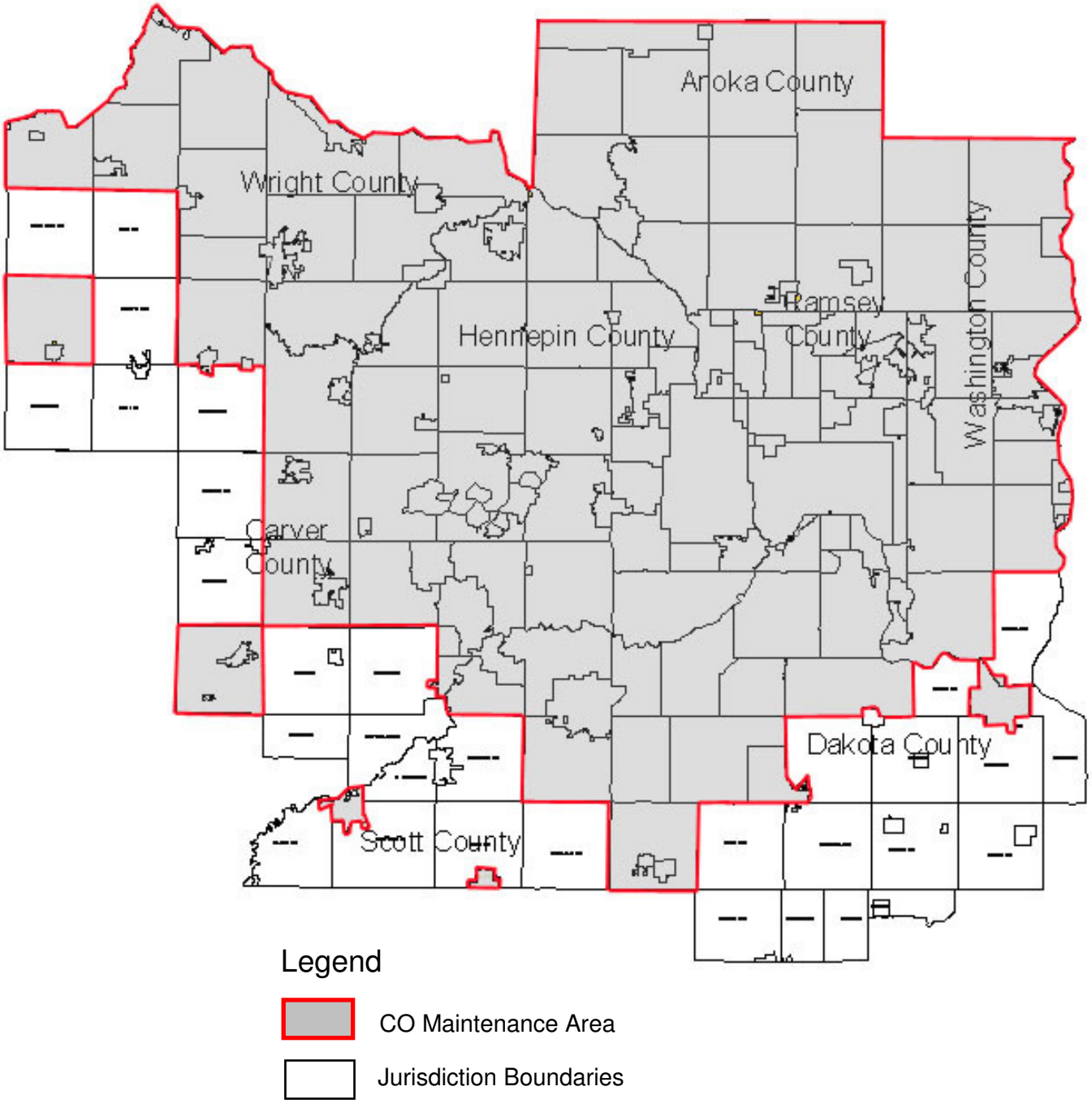
If the MPCA appeals to the Governor, the final conformity determination must have the concurrence of the Governor. The MPCA must provide notice of any appeal under this subsection to the MPO and Mn/DOT. If the MPCA does not appeal to the Governor within 14 days, the MPO or Mn/DOT may proceed with the 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, Mn/DOT, or Executive Director of an MPO.

Appendix A: Maps

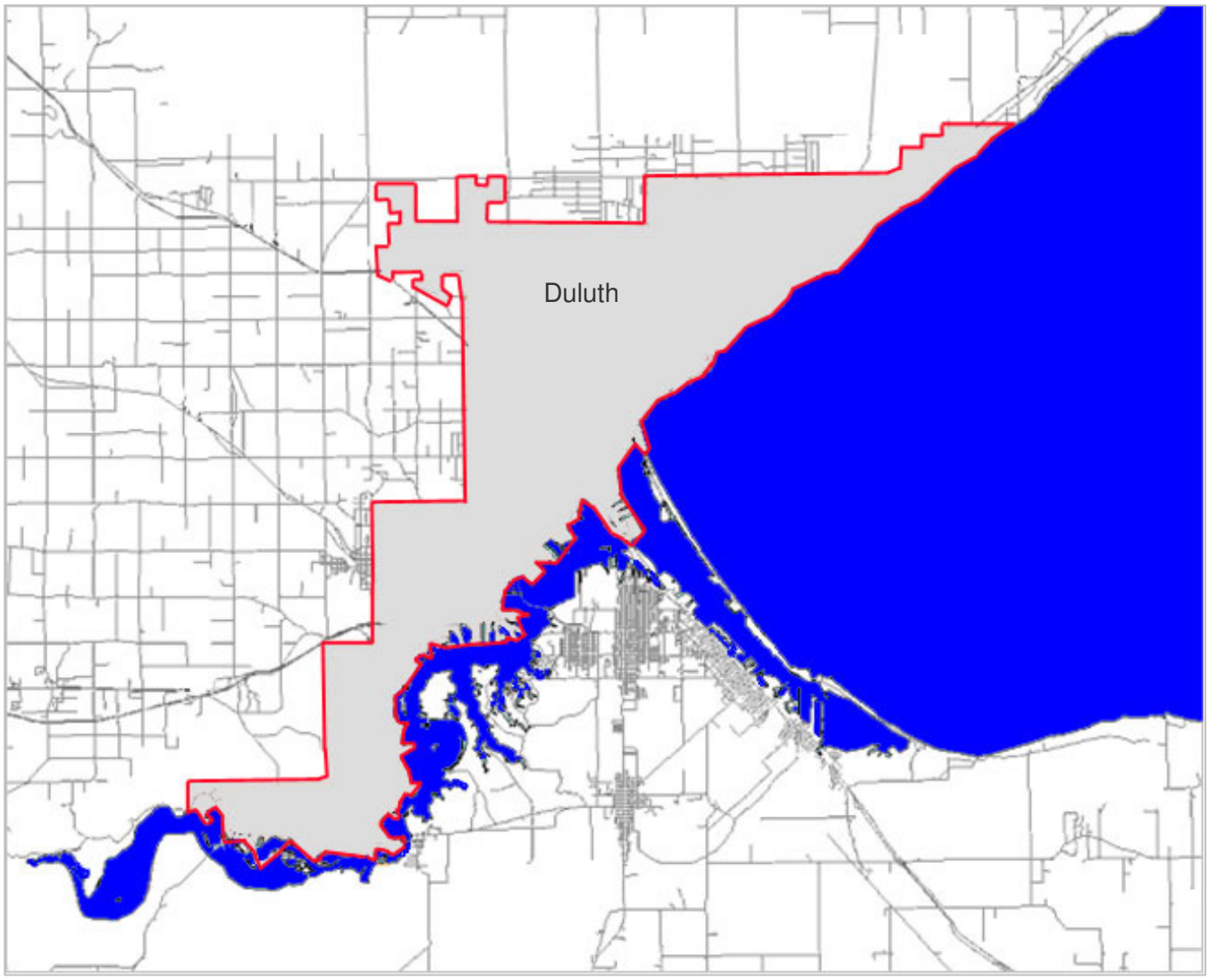
Minnesota MPO's Desiginated as Maintenance Areas for CO



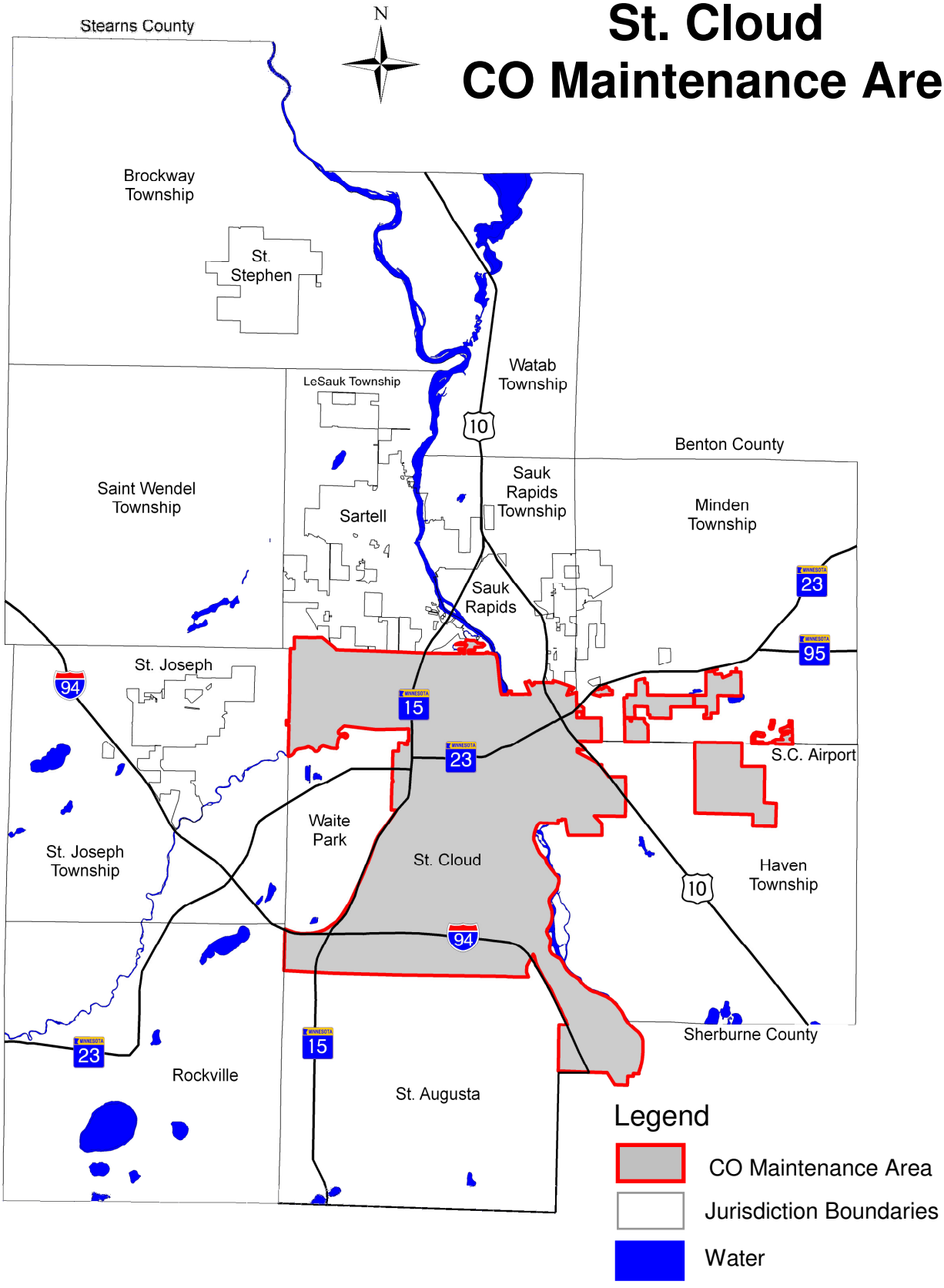
Seven County Metropolitan Area & Wright County CO Maintenance Area



Duluth
CO Maintenance Area



St. Cloud
CO Maintenance Area



APPENDIX B

Section 93.126 Exempt Projects

SAFETY PROJECTS	
Railroad/Highway Crossing	S-1
Hazard Elimination Program	S-2
Safer Non-Federal-Aid System Roads	S-3
Shoulder Improvements	S-4
Increasing Sight Distance	S-5
Safety Improvement Program	S-6
Traffic Control Devices and Operating Assistance • Other Than Signalization Projects	S-7
Railroad/Highway Crossing Warning Devices	S-8
Guardrails, Median Barriers and/or Crash Cushions	S-9
Pavement Resurfacing or Rehabilitation	S-10
Pavement Marking Demonstration	S-11
Emergency Relief (23 U.S.C. 125)	S-12
Fencing	S-13
Skid Treatments	S-14
Safety Roadside Rest Areas	S-15
Adding Medians	S-16
Truck Climbing Lanes Outside the Urbanized Area	S-17
Lighting Improvements	S-18
Widening Narrow Pavements or Reconstructing Bridges • With no additional travel lanes	S-19
Emergency Truck Pullovers	S-20
MASS TRANSIT PROJECTS	
Operating Assistance to Transit Agencies	T-1
Purchase of Support Vehicles	T-2
Rehabilitation of Transit Vehicles	T-3
Purchase of Office, Shop, and Operating Equipment for Existing Facilities	T-4
Purchase of Operating Equipment for Vehicles • Such as radios, fareboxes, lifts, etc.	T-5
Construction of Small Passenger Shelters and Information Kiosks	T-6
Construction or Renovation of Power, Signal, and Communications Systems	T-7
Reconstruction or Renovation of Transit Buildings and Structures • Rail or bus buildings • Storage and maintenance facilities • Stations, terminals, and/or ancillary structures	T-8
Rehabilitation or Reconstruction of Tracks Structures, Track, and Trackbed in Existing Right-Of-Way	T-9
Purchase of New Buses and Rail Cars to Replace Existing Vehicles or for Minor Expansions of the Fleet	T-10
Construction of New Bus or Rail Storage/Maintenance Facilities Categorically Excluded in 23 CRF Part 771	T-11

AIR QUALITY PROJECTS	
Continuation of Ride-Sharing and Van-Pooling Promotion Activities at Current Levels	AQ-1
Bicycle and Pedestrian Facilities	AQ-2
OTHER PROJECTS	
Specific Activities Which Do Not Involve or Lead Directly to Construction, Such As: • Planning and Technical Studies • Grants for Training and Research Programs • Planning Activities Conducted Pursuant to Titles 23 and 49 • U.S.C. • Federal-Aid Systems Revisions	O-1
Engineering to Assess Social, Economic and Environmental Effects of the Proposed Action or Alternatives to that Action	O-2
Noise Attenuation	O-3
Advance Land Acquisitions (23 CFR §712 or 23 CFR §771)	O-4
Acquisition of Scenic Easements	O-5
Plantings, Landscaping, etc.	0-6
Sign Removal	0-7
Directional and Information Signs	O-8
Transportation Enhancement Activities • Except rehabilitation and operation of historic transportation buildings, structures, or facilities	O-9
Repair of Damage Caused by Natural Disasters, Civil Unrest, or Terrorist Acts. • Except Projects Involving Substantial Functional, Locational, or Capacity Changes	O-10

**(Note: In PM-10 -nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.)*

Section 93.127 Projects exempt from regional emissions analyses.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM10 concentrations must be considered to determine if a hot-spot analysis is required prior to making a project level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see §93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

Projects Exempt from Regional Emission Analysis	
Intersection Channelization Projects	NR-1
Intersection Signalization Projects at Individual Intersections	NR-2
Intersection Reconfiguration Projects	NR -3
Changes in Vertical & Horizontal Alignment	NR -4
Truck Size & Weight Inspection Stations	NR -5
Bus Terminals & Transfer Points	NR -6

Section 93.128 Traffic signal synchronization projects.

Traffic signal synchronization projects may be approved, funded, and implemented without satisfying the requirements of this subpart. However, all subsequent regional emissions analyses required by §93.118 and §93.119 for Transportation Plans, TIPs, or projects not from a conforming plan and TIP must include such regionally significant traffic signal synchronization projects.

APPENDIX C

TIP CONFORMITY CHECKLIST

For areas not required by EPA to complete a regional emissions analysis (Duluth and St. Cloud):

In order for the TIP to meet the requirements of the EPA Transportation Conformity Rules (40 CFR 93, as of July 1, 2008), it must:

1. Be consistent with the MPO's long-range transportation plan;
2. Be consistent with the State Implementation Plan (SIP) for Air Quality;
3. Discuss the status of all Transportation Control Measures (TCMs) officially adopted as part of the SIP;
4. Be based on the most recent planning assumptions, derived from estimates of current and future population, employment, travel, and congestion, most recently approved by the MPO;
5. Appropriately classify projects as exempt, or in a category in which they may need intersection-specific (hot spot) analysis;
6. Be fiscally constrained;
7. Lead to no increases in the number or severity of violations at any monitor currently violating federal air quality standards;
8. Demonstrate it meets public participation requirements of the SAFETEA-LU and those contained in the January 24, 2008 EPA Final Conformity rule;
9. Include all Title 23 (FHWA) and Transit Act (FTA) projects; and
10. Identify all projects which have received NEPA approval but have not progressed within three years.

For areas required by EPA to complete a regional emissions analysis (Twin Cities):

In order for the TIP to meet the requirements of the EPA Transportation Conformity Rules (40 CFR 93, as of July 1, 2008), it must:

1. Be consistent with the Metropolitan Council's Transportation Policy Plan;
2. Be consistent with the State Implementation Plan (SIP) for Air Quality;
3. Discuss the status of all Transportation Control Measures (TCMs) officially adopted as part of the SIP;
4. Be based on the most recent planning assumptions, derived from estimates of current and future population, employment, travel, and congestion, most recently approved by the MPO;
5. Use the most recently EPA-approved air quality models;
6. Demonstrate that regional emissions resulting from implementation of projects of regional significance are less than those in the emissions budget established by the emissions inventory;
7. Include emissions from nonfederal regionally significant projects in this regional emissions analysis;
8. Appropriately classify projects as exempt, needing regional emissions analysis, or in a category in which they may need intersection-specific (hotspot) analysis;
9. Be fiscally constrained;
10. While in non-attainment status, include projects that significantly increase single occupancy vehicle capacity only if they are part of an approved Congestion Management System (CMS) plan;
11. Lead to no increases in the number or severity of violations at any monitor currently violating federal air quality standards;
12. Demonstrate it meets public participation requirements of the SAFETEA-LU and those contained in the January 24, 2008 EPA Final Conformity rule;
13. Include all Title 23 (FHWA) and Transit Act (FTA) projects; and
14. Identify all projects which have received NEPA approval but have not progressed within three years.

APPENDIX D

PLAN CHECKLIST

For areas not required by EPA to complete a regional emissions analysis (Duluth and St. Cloud):

In order for the Plan to meet the requirements of the EPA Transportation Conformity Rules (40 CFR 93, as of July 1, 2008):

1. The Plan must be fiscally constrained.
2. The conformity determination must be based upon the most recent planning assumptions, derived from estimates of current and future population, employment, travel, and congestion, most recently developed by or approved by the MPO.
3. The conformity determination must discuss how transit operation policies and assumed transit ridership have changed since the previous conformity determination.
4. The conformity determination must include reasonable assumptions about transit service and fare increases.
5. The conformity determination must use the latest existing information regarding the effectiveness of TCMs which have already been implemented.
6. Conformity must be determined according to consultation procedures and according to public participation procedures according to 23 CFR §450, and §93.105(a)(2) and (e) of the EPA transportation conformity rule.
7. Nothing in the Plan can interfere with the implementation of any TCM in the applicable implementation plan.
8. The Plan must contribute to emissions reductions.

For areas required by EPA to complete a regional emissions analysis (Twin Cities):

In order for the Plan to meet the requirements of the EPA Transportation Conformity Rules (40 CFR 93, as of July 1, 2008) it must:

1. Be consistent with the State Implementation Plan (SIP) for Air Quality;
2. Discuss the status of all Transportation Control Measures (TCMs) officially adopted as part of the SIP;
3. Be based on the most recent planning estimates created by the MPO's staff;
4. Use the most recently EPA-approved air quality models;
5. Demonstrate that regional emissions resulting from implementation of projects of regional significance are less than those in the emissions budget established by the emissions inventory;
6. Include emissions from nonfederal regionally significant projects in this regional emissions analysis;
7. Appropriately classify projects as exempt, needing regional emissions analysis, or in a category in which they may need intersection-specific (hotspot) analysis;
8. Be fiscally constrained;
9. Lead to no increases in the number or severity of violations at any monitor currently violating federal air quality standards;
10. Demonstrate it meets public participation requirements of the SAFETEA-LU and those contained in the January 24, 2008 EPA Final Conformity rule;
11. Include all Title 23 (FHWA) and Transit Act (FTA) projects;
12. Identify all projects which have received NEPA approval but have not progressed within three years.

Appendix E

Principal Contacts as of August 2008

The individuals who are principal agency contacts for this MOA and the Handbook as of May 2009 are:

Minnesota Pollution Control Agency	Innocent Eyoh Minnesota Pollution Control Agency 520 Lafayette Road St Paul, MN 55155-4194 (651) 757-2347
Metropolitan Council	Jonathan Ehrlich Metropolitan Council 390 Robert Street North Saint Paul, MN 55101 (651) 602-1408
Duluth-Superior Metropolitan Interstate Council	James Gittemeier Duluth-Superior Metropolitan Interstate Council 221 West First Street Duluth, MN 55802 (218) 529-7556
St. Cloud Area Planning Organization	Kirby Becker Saint Cloud Area Planning Organization 1040 County Road Four Saint Cloud, MN 56303 (320) 252-7568
Minnesota Department of Transportation	Marilyn Jordahl-Larson Minnesota Department of Transportation 6000 Minnehaha Avenue St. Paul, MN 55111 (651) 366-5801 Jim Henricksen Minnesota Department of Transportation 1500 West County Road B2 Roseville, MN 55113 (651) 234-7782
Federal Highway Adminsistration	Susan Moe Federal Highway Administration 380 Jackson Street, Suite 500 Saint Paul, MN 55101 (651) 291-6109