

**2016 MEMORANDUM OF AGREEMENT REGARDING
DETERMINATION OF CONFORMITY OF TRANSPORTATION PLANS,
PROGRAMS, AND PROJECTS TO STATE IMPLEMENTATION PLANS**

This Memorandum of Agreement (MOA) is entered into by and among the Michigan Department of Environmental Quality (MDEQ), the Michigan Department of Transportation (MDOT), the affected Metropolitan Planning Organization (MPOs) [Southeast Michigan Council of Governments (SEMCOG)], the United States Environmental Protection Agency (USEPA), the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA) (the Parties) to satisfy the transportation related emissions conformity requirements of the federal Clean Air Act (CAA), 42 U.S.C. § 7506(c); the Federal Aid Highway Act, 23 U.S.C. § 109(j); the Federal Transit Act, 49 U.S.C. ch. 53; related provisions of the federal Moving Ahead for Progress in the 21st Century Act (MAP-21) Pub. L. No 112-141 including, but not limited to, §§ 1113 (amending 23 U.S.C. § 149(b), 1201-1203 (amending 23 U.S.C. §§ 134,135 & 150) and 20005-20006 (amending 49 U.S.C. §§ 5303 & 5304), 126 Stat. 460-464, 500-526, and 628-652 (2012) and the implementing regulations of the USEPA at 40 CFR Parts 51 and 93 (2012), the FHWA at 23 CFR Part 450 (2014), and the FTA at 49 CFR Part 613 (2014); and

RECITALS

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

WHEREAS, federal agency activities in Michigan are subject to the provisions of 42 U.S.C. § 7506(c)(1) which states: “No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an implementation plan after it has been approved or promulgated under [42 U.S.C.] section 7410”; and

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

WHEREAS, the USEPA’s regulations codified at 40 CFR Parts 51 and 93 (2012) implement the requirement that MPOs/State Departments of Transportation (State DOTs) and the FHWA/FTA must make conformity determinations on transportation plans and transportation improvement programs in nonattainment and maintenance areas before they are adopted, approved or accepted, and on projects in those areas before they are approved or funded, “*Notice of Adoption of Rules re: Criteria and Procedures for Determining Conformity to State or Federal implementation Plans*,” 58 Fed. Reg. 62188 (Nov. 23, 1993) (USEPA’s Notice); and

WHEREAS, USEPA 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, “USEPA’s Notice,” 58 Fed. Reg. 62201, §IV.I.1; and

WHEREAS, USEPA’s Notice states that USEPA’s approach is, “...the validity of a conformity determination should depend on proper consultation procedures and that each State and participating agencies should jointly develop their own legally enforceable State conformity procedures.” 58 Fed. Reg. 62201, §IV.1.2; and

WHEREAS, USEPA's Notice states, "USEPA will accept State conformity procedures in any form provided the State can demonstrate to USEPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures." 58 Fed. Reg. 62209, §V.C.; and

WHEREAS, USEPA's regulations, 40 CFR § 51.390 and Part 93, give State and local governments certain flexibility in selecting the performance measures used as tests of conformity and certain discretion when a transportation plan does not conform to a State Implementation Plan (SIP) (for example, to allow motor vehicle emissions budgets in a submitted SIP to be used to determine conformity instead of the "build/no-build" test, and to allow rural areas to choose among several conformity tests to address the time period after that covered by the SIP); and

WHEREAS, CAA section 176(c)(4)(E), 42 U.S.C. § 7506(c)(4)(E), as amended and 40 CFR § 51.390(b) require states to submit transportation conformity SIPs that include the following three requirements of 40 CFR Part 93 (Determining Conformity of Federal Actions to State or Federal Implementation Plans; referred to hereafter as the "Federal Conformity Rule"): (a) 40 CFR § 93.105 which outlines the criteria for consultation procedures related to transportation conformity; (b) 40 CFR § 93.122(a)(4)(ii) which states that conformity SIPs must require that written commitments to control measures be obtained prior to a conformity determination if the control measures are not included in the MPO's transportation plan and transportation improvement program and commitments must be fulfilled; and (c) 40 CFR § 93.125(c) which states that conformity SIPs must require that written commitments to project-level mitigation or control measures be obtained prior to a positive conformity determination, and that project sponsors comply with such commitments. Transportation Conformity SIPs may include any other provisions of 40 CFR Part 93, subpart A. Additional guidance is provided in 40 CFR §§ 51.390 and 51.851, USEPA's January 2009, Guidance for Developing Transportation Conformity State Implementation Plans, and USEPA's January 2009, Guidance for Implementing the Clean Air Act Section 176(c)(8) Transportation Control Measure Substitution and Addition Provision; and

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

WHEREAS, the Parties agree and declare that this MOA and the consultation procedures herein are enforceable contractual agreements under Michigan law, as part of the SIP itself under 42 U.S.C. § 7410(a)(2)(E) and through the Natural Resources and Protection Act, 1994 PA 451, MCL 324.5501 *et seq.*; and

NOW, THEREFORE, the Parties intending to be legally bound adopt this document entitled the "2016 Memorandum of Agreement Regarding Determination of Conformity of Transportation Plans, Programs, and Projects to State Implementation Plans"; and agree as follows:

FURTHER IT BE RESOLVED, that the MDEQ and the MDOT agree to implement the processes and procedures as described in this "2016 Memorandum of Agreement Regarding Determination of Conformity of Transportation Plans, Programs, and Projects to State Implementation Plans," in cooperation with State MPOs herein described within Michigan nonattainment and maintenance areas, as follows:

A. PURPOSE

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

B. APPLICABILITY

The Transportation Conformity SIP applies to all USEPA designated nonattainment and maintenance areas for transportation related criteria pollutants within the state of Michigan.

C. TRANSPORTATION CONFORMITY CONSULTATION

(1) Affected Agencies

For the purpose of consulting on transportation conformity issues, the following participating agencies will comprise the Michigan Transportation Conformity Interagency Workgroup (MITC-IAWG):

- United States Environmental Protection Agency (USEPA)
- Federal Highway Administration (FHWA)
- Federal Transit Administration (FTA)
- Michigan Department of Environmental Quality (MDEQ)
- Michigan Department of Transportation (MDOT)
- Michigan Metropolitan Planning Organizations (MPOs) located in USEPA designated nonattainment and maintenance areas; e.g., the Southeast Michigan Council of Governments (SEMCOG). An MPO only participates if it has jurisdiction over the Long Range Transportation Plan (LRTP) or Transportation Improvement Program (TIP) being developed or amended.

The MITC-IAWG is a work group that makes technical and policy recommendations regarding transportation conformity issues. The workgroup will be comprised of technical staff members from the affected agencies associated directly with transportation conformity. Each agency will appoint a designated contact for the MITC-IAWG. The MITC-IAWG 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 MITC-IAWG undertakes largely depends on the proposal, the complexity, and the relationship with the parties to be consulted.

(2) Authorities and 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) MITC-IAWG Process Initiation: Transportation Conformity Actionable Events and Lead Agency Roles

The MITC-IAWG 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 MITC-IAWG member agency may initiate the consultation process to address pertinent air quality or transportation planning issues related to transportation conformity events.

- Development/review of on-road mobile source emissions models and methods - lead agency: USEPA, MDOT, or MPO;
- Development/review of travel demand models or any other analytical methods used to predict vehicle miles traveled - lead agency: MPO or MDOT;
- Development/review of regionally significant projects and changes - lead agency: MPO;
- Development/review of drafts for a new or amended LRTP and TIP; - lead agency: MPO;
- Development of conformity determination for a new or amended LRTP and TIP - lead agency: MPO;
- Development of conformity determination for projects in non-metropolitan nonattainment and maintenance areas - lead agency: MDOT;
- 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: MDEQ;
- TCM revisions prepared by the MPO for the MDEQ to be included in the SIP - lead agency: MPO;
- Notification of pending transportation conformity lapse - lead agency: FHWA/FTA;
- Notification of SIP actions, including those that may lead to nonconformity and/or sanctions – lead agency: USEPA;
- Approval of TIPs as Governor's designee for inclusion in the State Transportation Improvement Program - lead agency: MDOT;
- Formal conformity determination on the LRTP or TIP through a resolution of the MPO's body - lead agency: MPO;
- Ensures the adequacy of the interagency consultation process with respect to LRTPs, TIPs, and associated conformity analysis - lead agency: MPO;

- Conducts project-level conformity analysis regardless of project sponsor - lead agency: MDOT or project applicant;
- Accepts the LRTP or TIP and sends them to FHWA and FTA for action - lead agency: MDOT;
- Provides comments to FHWA/FTA on the conformity process and results - lead agency: USEPA;
- Reviews MDEQ, USEPA, and public comments and makes final conformity determination on the LRTP or TIP through a joint FHWA/FTA letter - lead agency: FHWA/FTA;
- Maintains records of statewide MITC-IAWG actions, regardless of who initiated them - lead agency: MDOT;
- Maintains records of MPO-specific MITC-IAWG actions, regardless of who initiated them - lead agency: MPO; and
- Conducts the public participation process for LRTP, TIP, and conformity determination - lead agency: MPO.

(4) Regular MITC-IAWG Agency Roles & Responsibilities:

(a) The lead MITC-IAWG agency is responsible for the following:

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

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

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

D. SPECIFIC ROLES & RESPONSIBILITIES

(1) United States Environmental Protection Agency

USEPA 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 MDEQ, MDOT, and the MPOs; finding motor vehicle emission budgets adequate or inadequate; approving or disapproving SIP revisions (including TCMs); and reviewing and commenting on regional emissions analyses and conformity determinations for LRTPs and TIPs. When possible, USEPA will participate in development of and review and comment on drafts of air quality conformity analyses.

(2) Michigan Department of Environmental Quality

MDEQ is the agency responsible for air quality planning to meet all National Ambient Air Quality Standards (NAAQS). The maintenance plans and redesignation demonstrations, known collectively as the SIP, are submitted by MDEQ to USEPA for approval. MDEQ consults with affected parties and agencies throughout the SIP development processes. A public comment period and an opportunity for a public hearing are held for each proposed revision to the SIP to give MPOs and others an opportunity to provide formal input. MDEQ provides coordination, advice, consultation, and cooperation to USEPA, FHWA, FTA, MDOT, Local Public Transit Agencies, and MPOs during the development of any TCMs to be incorporated into the SIP. If TCMs become necessary, MDEQ will work to ensure that TCMs are implemented and CAA requirements and attainment or maintenance of the federal NAAQS is achieved. MDEQ is also the lead agency for collecting and disseminating ambient air quality monitoring data in Michigan.

(3) Federal Highway Administration and Federal Transit Administration

The FHWA and FTA are responsible for participating on MPO committees and task forces; reviewing the MPO transportation planning processes; providing transportation planning assistance and guidance for LRTPs and TIPs; making conformity determinations for LRTPs and TIPs and FHWA/FTA projects ; providing guidance on air quality and conformity rules, policies and guidance; and providing notification of a pending conformity lapse.

(4) Michigan Department of Transportation

MDOT is responsible for serving on MPO committees, reviewing the planning processes, reviewing and commenting on conformity analyses and documents on LRTPs, TIPs and State Transportation Improvement Plan (STIP), and balancing local needs and preferences with the state-administered transportation system's needs. In nonattainment and maintenance areas where there is no designated MPO, MDOT is the lead transportation agency and assumes the MPO transportation planning responsibilities and will conduct conformity analyses and documentation for projects in non-metropolitan, nonattainment and maintenance areas. MDOT's responsibilities also include emission modeling and travel demand forecast modeling for non-Transportation Management Area (TMA) MPOs. MDOT also helps each MPO develop LRTPs and TIPs; reviews and comments on MPO LRTPs and TIPs; approves TIPs, as the Governor's designee, for inclusion in the STIP; and provides guidance to each MPO to help fulfill conformity

requirements. MDOT will work collaboratively with MDEQ and MPOs in the development and implementation of TCMs.

(5) Metropolitan Planning Organization

Each MPO is responsible for developing two main products through the transportation planning process. The first is a LRTP that includes improvements to highways, transit and other transportation modes to meet the transportation needs of the area over a minimum 20-year period. The second is a TIP, a short-range capital improvement program for highway, transit, and other transportation mode projects. In nonattainment and maintenance areas for the transportation-related pollutants, both the LRTP and the TIP must conform to the goals and objectives of the CAA, identified by MDEQ in the SIP.

The MPO is responsible for travel demand model development (or any other analytical methods used to predict vehicle miles traveled), estimating on-road mobile source emissions, and development of TCMs in collaboration with MDEQ and MDOT. 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 is responsible for developing transportation emission inventories and emission budgets in consultation with MDEQ. The MPO in consultation with other affected agencies will develop and implement TCMs if they become necessary to demonstrate either attainment or maintenance of the federal NAAQS. The MPO is responsible for analyzing the mobile source emissions effects of the LRTP and TIP. The MPO will make conformity demonstrations for LRTPs and TIPs as required by the federal CAA and state law. For non-TMA MPOs, MDOT will assume travel demand modeling, emission inventory, and emission modeling responsibilities laid out in this paragraph.

The MPO provides coordination, advice, consultation, and cooperation to MDEQ, MDOT, USEPA, FHWA and local public transit agencies during the course of the development of the LRTPs, 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 committee meetings. Additional meetings are accommodated when necessary and when MITC-IAWG agencies request them.

(6) Michigan Local Public Transit Agencies

Local and regional public transit agencies, although not parties to this MOA, customarily attend MPO technical advisory committee meetings. The regional transit authorities and local public transit agencies are responsible for supporting and conducting transportation planning activities for public transportation service. The local public transit agency is responsible for providing transit operations to accommodate local and regional connectivity goals. The Local Public Transit Agency, the Regional Transit Authority, the MPO, and MDOT customarily coordinate with one another, as applicable, to identify transit projects and impacts.

E. INTERAGENCY COLLABORATION

(1) Open Dialogue

MDEQ, MDOT, FHWA/FTA, USEPA, and the MPOs will engage in an open dialogue through collaborative participation in the planning processes of the 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

MDEQ will include the relevant MPOs, MDOT, and other local stakeholders in the SIP development process. This includes working with MITC-IAWG to address any concerns of the transportation community. The purpose of MITC-IAWG involvement is to provide a forum for building consensus. To achieve this goal, the MITC-IAWG will meet on a regular basis or as needed to resolve issues. Transportation agencies will also participate in the general meetings and consultations that MDEQ undertakes for all stakeholders and interested parties during (transportation) SIP development. Through a cooperative planning process, MDEQ will establish the Motor Vehicle Emissions Budgets (MVEBs) specified in the SIP.

(3) Transportation Planning Process

MDOT and the MPOs will involve MDEQ in their respective transportation planning process that produces LRTPs and TIPs when in nonattainment or maintenance areas. The MPOs and MDOT will design LRTPs and TIPs that conform to the goals and objectives of the CAA and the MVEBs specified in the SIP. With consultation and cooperation by MDEQ, the MPO and MDOT will assess and develop long-range mobile source emission budgetary needs of the urban and/or rural nonattainment areas to maintain and promote the CAA goals and support the economic, demographic, and healthy quality of life in an area. MDEQ will also provide consultation regarding the development of mobile source emissions budgets.

F. INTERAGENCY CONSULTATION PROCESS

(1) Specific Processes

The interagency consultation processes involving MDEQ, MDOT, USEPA, FHWA/FTA, and MPOs require that these agencies coordinate, advise, consult, and cooperate to address the following issues (see 40 CFR 93.105 *Consultation* (c) for the paragraphs referenced below).

(a) Emissions Models and Methods

For TMAs, the 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 MDOT. The MPO is responsible for mobile source emissions estimates and conformity determinations using the latest motor vehicle emissions model designated or approved by USEPA. For non-TMA MPOs and rural areas in the state, MDOT will assume developing transportation and vehicle activity assumptions and emission modeling responsibilities.

MDEQ is the lead agency for documenting meteorological conditions in consultation with USEPA during the SIP development process. The models and applicable guidance documents or methodologies to be used for hotspot analyses are created by USEPA in

collaboration with FHWA/FTA. MDOT with the interagency work group determines the modeling to be used in hotspot analyses and also provides the modeling parameters.

(b) Regionally Significant Projects and Changes

The MPO (or MDOT, for nonattainment and maintenance areas not included in an MPO) is the lead agency to identify regionally significant projects and significant changes to project design concept or scope in proposed projects for the LRTP and/or TIP. Through the consultation process, the MITC-IAWG will make a determination of which minor arterials and other transportation projects should be considered “regionally significant” projects, and which projects may have undergone a significant change in design concept or scope since the previous TIP or LRTP was approved.

(c) Exempt Project Emissions

The MPO (or MDOT, for nonattainment or maintenance areas not included in an MPO) is the lead agency for evaluating whether projects otherwise exempted from meeting the requirements of 40 CFR 93.126 *Exempt Projects* and 93.127 *Projects Exempt from Regional Emissions Analysis*, should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason.

(d) Transportation Control Measure Delays and Substitutes

The MPO (or MDOT, for nonattainment areas not included in an MPO) is the lead agency to ensure that the LRTP and TIP provides for the timely completion or implementation of TCMs in the applicable implementation plan eligible for funding. Additionally, a review of the process and funding sources to ensure implementation of TCMs is on schedule is included as part of the TIP criteria. If TCMs are behind schedule, then the MPO, MDOT, and MDEQ will work collaboratively to determine whether past obstacles to implementation of TCMs 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, MDEQ, and MDOT will consult early regarding any delay in TCM implementation to determine the best path forward regarding any necessary revisions to the applicable SIP, including potential removal of a TCM or substitution of a TCM or other transportation-related emission reduction measure.

(e) Exempt Project Revisions

The MPO (or MDOT, for nonattainment areas not included in an MPO) is the lead agency for notification to affected agencies of any LRTP or TIP revisions or amendments that merely add or delete exempt projects listed in 40 CFR 93.126 or 93.127.

(f) Rural Nonattainment Areas

MDOT is the lead agency for selecting conformity tests and methodologies required in isolated rural nonattainment and maintenance areas under 40 CFR 93.109(l) *isolated rural nonattainment and maintenance area* (2)(iii).

(2) Consultation: Triggers and Jurisdictions

The interagency consultation processes involving the MDEQ, MDOT, FHWA/FTA, USEPA, and MPOs require that these agencies coordinate, advise, consult, and cooperate to address the following issues:

(a) Conformity Triggers

The MPO (or MDOT, for nonattainment areas not included in an MPO) is the lead agency responsible for evaluating events that will trigger new conformity determinations in addition to those triggering events identified in 40 CFR 93.104 *Frequency of Conformity Determinations*.

(b) Multiple Jurisdictions

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

(3) “Donut” Areas

The MPOs and MDOT will consult in situations where the metropolitan planning area does not include the entire nonattainment 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 MDOT will consult with local units of government and public transit agencies to identify all regionally significant transportation projects to be included in the LRTP and TIP, regardless of whether the projects are federally or locally funded. The procedures established by MDOT and the MPOs to regularly update and amend the TIP ensure that the plans for the construction of regionally significant projects are disclosed to the MPOs on a regular basis, and that any changes to those plans are immediately disclosed.

(5) Project Details

The MPOs and MDOT will consult as needed to determine in sufficient detail the design and scope of proposed projects identified in the preceding paragraph (4) to allow for a proper regional emissions analysis under 40 CFR 593.122 *Procedures for Determining Regional Transportation – Related Emissions*, in the event that the project sponsors have not yet identified these features.

(6) Travel Model Development

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

(7) Document Distribution

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

(8) Statewide and Regional Level Consultation

In most cases, interagency consultation will be done on a regional basis, involving all state and federal MITC-IAWG members and the MPO with jurisdiction over the LRTP or TIP being developed or amended. However, for some tasks such as the development of on-road mobile source emissions models and methods to be used in conformity analyses, a statewide MITC-IAWG, including all MPOs in nonattainment or maintenance areas, will be utilized. This will allow the entire state to work toward common and consistent methods for developing mobile emissions inventories and conformity practices.

G. CONFLICT RESOLUTION PROCESS

Historically in Michigan, the interagency cooperation and adopted processes included in this MOA have resulted in most concerns or conflicts over conformity being resolved through consultations within the interagency workgroup, minimizing the need for a conflict resolution process. However, as established in 40 CFR 93.105 *Consultation (d) Resolving Conflicts*, should the MITC-IAWG not be able to resolve such conflicts between the MDEQ, MDOT and the MPOs during routine consultation and/or negotiation, the following procedures/steps will apply:

1. The MITC-IAWG will prepare and agree to a statement of the nature of the conflict.
2. Staff of the affected agencies (MDEQ, MDOT, and affected MPOs) will meet in a good faith effort to resolve the conflict in a manner acceptable to all parties.
3. If the staff is unsuccessful in reaching consensus, the Directors of MDEQ and MDOT, 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, if consensus is reached between the MDEQ, MDOT and affected MPO representatives, that shall be considered to have resolved the conflict.

In step three, MDEQ, MDOT, and the affected MPO shall make every effort to resolve differences, including personal meetings between the heads of the MDEQ, MDOT, and the MPO or their policy-level representatives.

If consensus is reached in step three, MDOT and the MPO shall notify the Director of the MDEQ with a letter documenting that consensus of the proposed conformity determination (or policy decision) has been reached.

If step three does not result in consensus and the parties concur that consensus is not possible, a letter from MDOT or the MPO notifying the MDEQ that MDOT or the MPO plan to proceed with a conformity decision or policy that is the source of the conflict will be sent. The MDEQ will by letter request comments on the proposed conformity determination or policy decision from the affected agencies. Affected agencies will have ten days from date of letter to respond to MDEQ's request for clarification of the issues. The MDEQ shall have 14 calendar days after receipt of the response letters to appeal the proposed determination of conformity (or other policy decision under this rule) to the Governor.

If the MDEQ appeals to the Governor, the final conformity determination or policy must have the concurrence of the Governor. The MDEQ must provide notice of any appeal under this subsection to the MPO and MDOT. If the MDEQ does not appeal to the Governor within 14 days, the MPO or MDOT may proceed with the final conformity determination. The Governor may delegate his or her role of hearing any such appeal under this subsection and can decide whether to refer the conformity determination to another official or agency within the state (but not to the Director or staff of the MDEQ, MDOT, or the Executive Director or staff of an MPO).

Conflicts between MDOT and MDEQ, if not resolved in step three, will be decided by the Governor.

All conformity conflicts will be resolved at the state level before being forwarded to FHWA for a final transportation conformity finding.

H. PUBLIC CONSULTATION PROCEDURES

When making a conformity determination, the MPO (or MDOT, for nonattainment and maintenance 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 LRTPs and TIPs, consistent with the requirements of 23 CFR 450.316(a), *Interested Parties*, Participation, and Consultation, 40 CFR 93.105(e), *Public consultation procedures*, 93.112, *Criteria and Procedures: Consultation*, and 49 CFR 7.43, *Fee Schedule*.

Additionally, as part of the continuing public involvement process, the MPO (or MDOT, for nonattainment areas not included in an MPO) will specifically address in writing any public comments related to known plans for a regionally significant project not receiving FHWA or FTA funding or approval, that is not reflected in the emissions analysis supporting a proposed conformity finding for a LRTP or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects otherwise required by law. The MPO shall notify the public of any MDEQ letter of comment for air quality conformity before the LRTP or TIP document is approved by the MPO's governing body.

I. TRANSPORTATION CONTROL MEASURES

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

J. PROJECT LEVEL MITIGATION MEASURES

In accordance with 40 CFR 93.125(a), *Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures*, prior to making a project-level conformity determination for a transportation project, the MPO, other recipient of funds designated under 23 U.S.C. or Federal Transit Laws, or FHWA/FTA must obtain from the project sponsor and/or operator a written commitment, as defined in 40 CFR 93.101, *Definitions*, to implement any project-level mitigation or TCM in the construction or operation of the project identified as a condition for National Environmental Policy Act process completion. The written commitment to implement

such a project-level mitigation measure or TCM must be fulfilled by the appropriate entity. Prior to making a conformity determination for the LRTP or TIP, MDOT will ensure any project-level mitigation measure or TCMs for which a written commitment has been made are included in the project design concept and scope. The MPO will ensure these are appropriately identified in the regional emissions analysis used in the conformity analysis. Written commitments must be obtained before such mitigation measure or TCMs are used in a project-level hotspot conformity analysis for a project-level determination.

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 "hotspot") conformity finding, do not require written commitments.

K. MODIFICATION OF THE MOA

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

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

APPROVED BY:

For the Federal Highway Administration:

Russell L. Jorgenson
Russell L. Jorgenson, Division Administrator

8/15/2016
Date

For the Federal Transit Administration:

Marisol Simon
Marisol Simon, Regional Administrator

7/7/2016
Date

For the United States Environmental Protection Agency:

Robert A. Kaplan
Robert A. Kaplan, Acting Regional Administrator

12/13/16
Date

For the Southeast Michigan Council of Governments:

Kathleen Lomako
Kathleen Lomako, Executive Director

April 27, 2016
Date

For the Michigan Department of Environmental Quality:

Keith Creagh
Keith Creagh, Director

6/2/2016
Date

For the Michigan Department of Transportation:

Mark T. Steudle
Mark T. Steudle, Director

April 29, 2016
Date

4-29-16
jls

4-28-16