



Chicago Metropolitan Agency for Planning

233 South Wacker Drive
Suite 800
Chicago, Illinois 60606

312 454 0400
www.cmap.illinois.gov

Tier II Consultation Meeting

Agenda

December 6, 2012

Lake County Room

CMAP Offices

Teleconference # 800-747-5150, Access Code 3867454

- 1.0 **Call to Order and Introductions** 10:30 a.m.
- 2.0 **Agenda Changes and Announcements**
- 3.0 **Approval of Minutes – August 28, 2012**
ACTION REQUESTED: Approval
- 4.0 **PM Hot Spot Methodology**
IDOT has requested approval of the attached minor changes to the methodology for determining if CREATE passenger rail projects are “Projects of Air Quality Concern” in PM_{2.5} and PM₁₀ Nonattainment and Maintenance areas.
ACTION REQUESTED: Approval
- 5.0 **GO TO 2040 Major Capital Projects**
 - 5.1 **Circle Interchange Project (<http://circleinterchange.org/>)**
A request from IDOT to amend GO TO 2040 to include the Circle Interchange project is attached. The Department has provided the data required to calculate the major transportation capital project evaluation measures used in GO TO 2040 and for demonstrating fiscal constraint. Staff is currently reviewing the data.
ACTION REQUESTED: Discussion
 - 5.2 **Prairie Parkway**
If a Plan Amendment to add the Circle Interchange project moves forward, consideration may be given to revising the description of the Prairie Parkway in GO TO 2040.
ACTION REQUESTED: Discussion
 - 5.3 **Illiana Expressway**
Federal acceptance of the Tier 1 Draft EIS is expected before the end of this year. Tier 2 of the Draft EIS is expected to require 12 to 18 months of work, at which time the project would need to be in GO TO 2040 to receive federal action. However, if

IDOT and INDOT seek a public-private partnership for this project, it may be beneficial to have the project in the region's plan before federal action is required.
ACTION REQUESTED: Information

5.4 Clarification of TIP ID: Interstate 80 - Ridge Rd. to US 30 (09-12-0036)

On September 8, 2011 the Consultation Team determined that widening of existing bridges to accommodate the eventual widening of Interstate 80 could be included in the TIP without requiring a GO TO 2040 Plan amendment. At that time, IDOT planned to include this work in TIP ID 12-09-0010. Since then, IDOT has added an independent project for the construction of the bridges as TIP ID 09-12-0036.

ACTION REQUESTED: Acceptance of the change in TIP ID.

6.0 Metropolitan Planning Area Update

It is anticipated that the MPA will be updated at the March 2013 MPO Policy Committee meeting. Status of this work will be reviewed.

ACTION REQUESTED: Discussion

7.0 Update Transportation Conformity SIP

In 1998, the Illinois EPA finalized the attached Memorandum of Agreement on the process to conduct Transportation Conformity in the Chicago nonattainment area. This agreement was in the process of being approved for inclusion in the SIP. However, due to a March 1999 court ruling on a transportation conformity issue, the USEPA revised the conformity process which had been incorporated into the MOA, rendering the MOA unapprovable. The Illinois EPA would like to revisit the transportation conformity agreement and begin discussions with stakeholders in order to submit an updated transportation conformity plan.

ACTION REQUESTED: Discussion

8.0 Major Capital Project Updates

A brief update on the status of Major Capital Projects is available on the Transportation Committee [minutes page](#). The direct link to the report is http://www.cmap.illinois.gov/c/document_library/get_file?uuid=bad48f65-53a8-4922-9585-3635924eed75&groupId=20583.

ACTION REQUESTED: Information

9.0 Other Business

10.0 Public Comment

This is an opportunity for comments from members of the audience. The amount of time available to speak will be at the chair's discretion. It should be noted that the exact time for the public comment period will immediately follow the last item on the agenda.

11.0 Next Meeting

12.0 Adjournment

Tier II Consultation Team Members:

	CMAP		FHWA		FTA		IDOT
	IEPA		RTA		USEPA		



Tier II Consultation Meeting
DRAFT Minutes - August 28, 2012

Participants:

Erin Aleman	CMAP
John Baczek	IDOT – Bureau of Design & Environment - via phone
Patricia Berry	CMAP
Bill Brown	NIRPC – via phone
Kama Dobbs	CMAP
Stephanie Brown	Parsons Brinkerhoff
Bruce Carmitchel	IDOT – Office of Planning & Programming
John Donovan	FHWA
Matt Fuller	FHWA – via phone
Brian Kapala	Parsons Brinkerhoff
Don Kopec	CMAP
Michael Leslie	USEPA
Jane Lin	UIC – via phone
Matt Maloney	CMAP
Adin McCann	HNTB – via phone
Tom Murtha	CMAP
Holly Ostdick	CMAP
Ross Patronsky	CMAP
Mark Pitstick	RTA
Mike Rogers	IEPA
Steven Schilke	IDOT – Bureau of Design & Environment - via phone
Gerry Trzupek	Huff & Huff
Kermit Wies	CMAP
Walt Zyzniewski	IDOT – Bureau of Design & Environment - via phone

- 1.0 Call to Order and Introductions** 10:00 a.m.
All participants introduced themselves.
- 2.0 Agenda Changes and Announcements**
Item 11.0 was moved to the beginning of the agenda.
- 3.0 Approval of Minutes – March 13, 2012**
On a motion by Mr. Carmitchel, seconded by Mr. Leslie, the minutes were approved as presented.

4.0 SIP Update/Re-designation Status

Mr. Leslie reported that final approval of IEPA's redesignation request and maintenance SIP under the 1997 8-hour ozone standard occurred on August 13, 2012. He also reported that the redesignation request and maintenance SIP under the 1997 annual PM standard continues to be held up by interstate transport issues and budgets in the proposed SIP will not be found adequate. As a result the 2002 baseline test should continue to be used in conformity analyses.

5.0 Impact of proposed PM_{2.5} standard on region

Mr. Leslie reported that US EPA proposed an annual range of 12 – 13 mg/m³, but is currently accepting public comment on a standard down to 11 mg/m³. He reported that it is anticipated that areas will be designated for non-attainment in December 2014 with an effective date in 2015. Mr. Rogers noted that at 13 mg/m³, the region would be in attainment, but at 12 it would not be.

6.0 CREATE Passenger Rail Projects of Air Quality Concern

Ms. Lin provided an overview of revisions to the MOVES input parameters tables that resulted from the March Consultation Team meeting and a follow-up conference call. On a motion by Mr. Rogers, seconded by Mr. Leslie, the team approved the tables as presented.

7.0 GO TO 2040 Major Capital Projects

7.1 Illiana Expressway (<http://www.illianacorridor.org/>)

Mr. Carlson explained that IDOT would like to proceed with preparing plats and legals for locations along the preferred corridor of the Illiana Expressway. He stated that IDOT views this as a phase 2 engineering activity and explained that the intent is not to complete phase 2 plans preparation. Mr. Donovan agreed that this activity would be acceptable prior to demonstrating conformity and amending the full project into GO TO 2040 and that staff from CMAP, FHWA and IDOT would work together to determine how to properly represent this phase of work in the TIP. Subsequent to the meeting, it was agreed that "ENG" would be used in the TIP for this work.

7.2 Circle Interchange Project (<http://circleinterchange.org/>)

Mr. Baczek provided an overview of IDOT's proposed project to reconstruct the Circle Interchange. He reported that the substructure of the interchange is in need of repair, and the state would like to include congestion relief measures, including the possible addition of a fourth through lane in each direction, during the reconstruction project. He reported that a preferred alternative is expected to be developed this winter, with a public hearing in early 2013, followed by design approval in the Spring. The phase one analysis will include development of a funding plan and may include staged implementation. Based on the current average daily traffic and truck percentages included in Mr. Baczek's overview, Mr. Leslie

noted that a hot-spot analysis may be needed. Mr. Fuller noted that the change in volumes may be more critical in determining this need than just the existing volumes. Mr. Zyzniewski suggested that once projections are obtained, the group could meet to discuss the air quality analysis requirements.

Mr. Donovan noted that this project is not included in the region's long range plan, and therefore could not receive NEPA approval. He pointed out that documentation demonstrating fiscal constraint and conformity would be needed and that the project would be expected to be evaluated by CMAP using the GO TO 2040 evaluation measures used for other major capital projects in the plan in order for the project to be amended into the plan. Mr. Kopec stated that in order to meet the schedule presented by Mr. Baczek, the GO TO 2040 amendment (information due to CMAP by November 1, 2012) and TIP Conformity amendment (TIP change submitted by December 7, 2012) would need to occur in March 2013.

7.3 Prairie Parkway ROD Status

Mr. Donovan explained that FHWA rescinded the Record of Decision (ROD) for the Prairie Parkway project on August 22, 2012. He stated that FHWA determined that the federal earmark is being used for the IL 47 from Caton Farm Road to I-80 "independent utility" project. Additionally, the "Prairie Parkway" section of the project is not included in GO TO 2040 or the state's multi-year program. Mr. Kopec stated that GO TO 2040 does include support for preservation of right-of-way for the project, and Mr. Donovan stated there are many details to be discussed regarding the implications of this action, including preservation of right-of-way. Follow-up discussions between FHWA and IDOT District 3 will be scheduled.

8.0 Semi-Annual TIP Conformity Amendment

Ms. Berry noted that the semi-annual conformity amendment is currently posted for public comment through September 4 and is scheduled to be considered at the joint meeting of the CMAP Board and MPO Policy Committee in October 2012. Mr. Patronsky asked for confirmation that for the March 2013 conformity analysis CMAP would use MOVES for the emissions inventories, and that the analysis would need to include the:

- maintenance SIP for the 1997 8-hour ozone standard (budgets approved August 12, 2012)
- 2008 ozone standard using the maintenance SIP budgets (conformity must be demonstrated by July 2013), and
- 1997 fine particulate standard using a 2002 baseline test. The MOBILE baseline inventories can continue to be used.

Mr. Leslie confirmed, noting that 2015 is the attainment year for the 2008 ozone standard, and will thus need to be an analysis year, along with 2025, which is the horizon year for the maintenance SIP, and 2040, the horizon year of GO TO 2040.

9.0 Transportation Improvement Program

9.1 Work Types

Ms. Dobbs explained that staff recently updated the work types list in order to better be able to classify projects, based on work types, as “maintenance”, “modernization” or “expansion”.

9.2 Fund Sources

Ms. Berry explained that the City of Chicago and the CTA intend to apply for TIFIA funding and had inquired about the appropriate designation of projects using TIFIA funding in the TIP. She stated that staff had discussed the issue and concluded that TIFIA is a funding mechanism, not a fund source and that CMAP would work with sponsors receiving TIFIA funding and FHWA to document this funding mechanism in the TIP.

9.3 Corridor Improvement Projects

Ms. Berry reported that IDOT Bureau of Design and Environment had requested guidance on how to include Corridor Improvement projects in the TIP. She stated, and Mr. Donovan concurred that the inclusion of corridor improvement planning projects in the TIP or the Unified Work Program (UWP) would depend on the fund source utilized for those studies.

9.4 Approval Dates Boilerplate

Ms. Berry noted that CMAP receives many inquiries about the appropriate TIP and Long Range Plan approval dates to be reflected in project environmental documentation. The team agreed that for this purpose, the date of the last conformity amendment would be appropriate. Ms. Dobbs noted that for consistency and convenience, the latest GO TO 2040, TIP and Conformity Amendment approval dates will be inserted into IDOT standard language and posted on the TIP Schedule and Approvals page (<http://www.cmap.illinois.gov/tip/ffy11-schedule-and-approvals>) of the CMAP website. IDOT staff stated they would start directing consultants to that page.

10.0 SEWRPC Conformity Analysis

Mr. Patronsky reported that SEWRPC is currently undergoing a TIP update, and will be including a conformity analysis for the portion of Kenosha County that is within the 2008 8-hour ozone standard nonattainment area. Mr. Leslie reported that USEPA has determined that SEWRPC can proceed with their analysis independent of CMAP and NIRPC and does not need to incorporate their budgets or match their analysis years.

11.0 Public Participation Plan

Ms. Aleman reported that an updated CMAP Public Participation Plan is expected to be considered at the joint meeting of the CMAP Board and MPO Policy Committee in October 2012. She stated that changes were mainly contained in section 3 of the report.

Mr. Pistick reported that RTA staff is working with Ms. Aleman to incorporate changes to meet requirements from the last triennial review.

12.0 Major Capital Project Updates

A brief update on the status of Major Capital Projects is available on the Transportation Committee [minutes page](#). The direct link to the report is http://www.cmap.illinois.gov/c/document_library/get_file?uuid=04be86ef-9146-4f10-827b-8a54d636d9d3&groupId=20583.

13.0 Other Business

Ms. Ostlick reported that the 2010 census resulted in the addition of the Village of Sandwich in DeKalb County to the Chicago, IL-IN urbanized area. She stated that CMAP and IDOT staff have met with staff from Sandwich and the DeKalb MPO to discuss the implications and options for Sandwich now that they are part of the urbanized area.

Mr. Carlson announced that IDOT would be holding public hearings in early October seeking comments on the multi-year program and long range plan.

14.0 Public Comment

None.

15.0 Next Meeting

The next meeting is on call. Ms. Berry suggested that follow-up for the Circle Interchange may be handled at the Transportation Committee level, since all of the team members except Mr. Leslie are also members of that committee. She stated that Mr. Leslie would be invited to attend and participate in those discussions in the event that that is where the follow up occurs.

16.0 Adjournment

The meeting adjourned at 11:08 a.m.

Tier II Consultation Team Members:

	CMAP		FHWA		FTA		IDOT
	IEPA		RTA		USEPA		

METHODOLOGY FOR DETERMINING IF CREATE PASSENGER RAIL PROJECTS ARE “PROJECTS OF AIR QUALITY CONCERN” IN PM_{2.5} AND PM₁₀ NONATTAINMENT AND MAINTENANCE AREAS”

The March 10, 2006 Particulate Matter Hot-Spot Analysis rule (71 FR 12491), provided examples of what would be considered “projects of air quality concern” in Particulate Matter (PM_{2.5} and PM₁₀) Nonattainment and Maintenance Areas. One example of a highway project showed an increase of 10,000 trucks per day. While this increase in diesel trucks was not described as a threshold, it could be used as the foundation of determining if a project is one of air quality concern. The 10,000 diesel trucks per day data point could be utilized for establishing a train volume data point to assist in determining if a CREATE Passenger Rail Project (which is subject to Transportation Conformity) is a “project of air quality concern.” FHWA and IDOT are proposing the following process be used to help make this determination:

TRUCK/TRAIN ANALYSIS

1. Determine if the project is located within the PM_{2.5} Nonattainment Area only or if it is located in the Lyons Township or the Lake Calumet PM₁₀ Maintenance Areas.
2. ~~IEPA will provide total~~ Total PM emissions (grams/mile) ~~for 10,000 trucks_ for 2010, 2015 and 2025~~ the design ~~years-year~~ based on PM_{2.5} and PM₁₀ average emission factors for ~~diesel powered combination single unit short and long haul trucks the two worse-case Heavy Duty Diesel Vehicle classes (HDDV 8a and HDDV 8b)~~ obtained from the ~~MOBILE 6.2~~ MOVES model ~~used~~ with the specific ~~NE~~ Cook County Illinois inputs will be generated and used.
3. Using #2 above, multiply total emissions for 10,000 trucks (grams/mile) by 1 mi to calculate the total emissions for 10,000 trucks in grams/day. (Note: this is a constant for a given design year.)
4. Obtain the PM emission factor for the fleet average (all locomotives) in grams/gallon (for the design year). Source: USEPA Publication *Emission Factors for Locomotives*, EPA-420-F-~~9709-054025~~, April 2009 ~~December 1997~~, unless more recently developed information is available.
5. Determine the number of passenger rail locomotives associated with the design year no-build case and with the proposed design year build case. Subtract the no-build number from the build number to obtain the increase in passenger rail locomotive traffic associated with the project. (Note: this will vary from one project to another.)
6. Obtain fuel consumption rate of the passenger rail locomotives (miles/gallon). (Note: this will be provided by the RRs and is a constant.)
7. Using #3, #4, and #5 above, multiply delta number of trains (TRN/day) by inverted train fuel consumption rate (gallons/mile), the train emission factor (grams/gallon) and 1 mile to calculate the total emissions of the increase in train traffic (grams/day). (Note: this will vary from one project to another.)
8. Compare total emissions of the increase in train traffic, #6 above, to total emissions of 10,000 trucks calculated in #2 above. If emissions from the increase in train traffic closely approaches or exceeds that of 10,000 trucks, it is an indication that the project is of air quality concern.

Since the total truck emissions for 10,000 trucks is a constant, and since the train fuel consumption rate and emission factor will be constants, we can multiply the total truck emissions for 10,000 trucks by the train fuel consumption rate and then divide by the train emissions factor to determine how many trains would be needed to be equivalent to 10,000 trucks. Once we have calculated this number, we would then compare the increase in train traffic number to this number. If the implementation of a CREATE passenger rail project approaches or exceeds this number, it is an indication the project is of air quality concern.

Since passenger rail projects are transit projects, it was determined that the CREATE passenger rail projects should also be looked at as transit type projects when applying the PM Hot-Spot rules. Because FTA is more familiar with transit type projects, FHWA sought and utilized their advice when developing this process of applying the PM Hot-Spot rules and determining if CREATE passenger rail projects should be considered “projects of air quality concern.”

In § 93.123(b)(1) of the PM Hot-Spot regulations, transit projects that are considered “projects of air quality concern” are described as:

- (iii) New bus and rail terminals and transfer points that have a significant number of diesel vehicles congregating at a single location
- (iv) Expanded bus and rail terminals and transfer points that significantly increase the number of diesel vehicles congregating at a single location

In addition, the March 10, 2006 PM Hot-Spot rules provide transit type examples of “projects of air quality concern” such as “An existing bus or intermodal terminal that has a **large vehicle fleet** where the number of diesel buses increases by 50% or more, as measured by bus arrivals.” The final rule also gives the example of what **would not** be considered a project of air quality concern as: “A 50% increase in daily arrivals at a **small terminal (e.g., a facility with 10 buses in the peak hour).**”

No “new” bus or rail terminals and transfer points are currently proposed under the CREATE program. As such, this analysis will focus on “expanded” bus and rail terminals and transfer points. Also, while the CREATE program does not involve any projects which will physically “expand” any existing bus or rail terminals and transfer points, it is possible that a CREATE project may cause an increased use of a facility, that is, implementation of a CREATE project may cause an existing rail terminal(s) to service additional passenger rail lines which they currently do not service. Although the PM Hot-Spot rules do not specifically mention this situation, based on advice from FTA, this does not preclude us from investigating the effects of this increase in train arrivals on the facility. FTA has indicated that, for transit projects in general, these types of projects would rarely increase use of a facility to a level that would approach or exceed the 50% increase indicated by the PM Hot-Spot rules. With this in mind, the following analysis was developed to assist in determining if a CREATE passenger rail project is one of air quality concern:

TRAIN ARRIVAL ANALYSIS

- 1) Determine if each terminal (station) along the involved line has a **“large vehicle fleet”** or is a **“small terminal (e.g., a facility with 10 buses in the peak hour).”** If it is determined that all terminals (stations) along the involved line are small terminals, the project is not one of air quality concern. This determination will be included in the NEPA document for the project. If it is determined that one or more terminals (stations) along the involved line has a large vehicle fleet, proceed to #2.
- 2) Calculate the percent increase in daily passenger train arrivals at each terminal (station) that has a large vehicle fleet (percent difference between design year train arrivals and existing train arrivals at the facility). If this closely approaches or exceeds 50% for any terminal evaluated, it is an indication that the project is one of air quality concern.

The above analyses would be completed for each CREATE Passenger Rail Project to determine if it is a “project of air quality concern.”

Documentation:

If it is determined that the CREATE Passenger Rail Project is not a “project of air quality concern”, the following will be included in the NEPA document:

“This project does not meet the definition of a project of air quality concern as defined in 40 CFR 93.123(b)(1). Due to {state reason(s)}, it has been determined that the project will not cause or contribute to any new localized PM_{2.5} or PM₁₀ violations or increase the frequency or severity of any PM_{2.5} or PM₁₀ violations. EPA has determined that such projects meet the Clean Air Act’s requirements without any further Hot-Spot analysis.”

If a CREATE Passenger Rail Project is determined to be a project of air quality concern, a qualitative Hot-Spot analysis will be required to be completed for the project.



Illinois Department of Transportation

Office of the Secretary
2300 South Dirksen Parkway / Springfield, Illinois / 62764
Telephone 217/782-5597

CMAP

October 16, 2012

Mr. Randall S. Blankenhorn
Executive Director
Chicago Metropolitan Agency for Planning
233 South Wacker Drive, Suite 800
Chicago, Illinois 60606

Dear Mr. Blankenhorn:

In order for Phase I of the I-90/94 at I-290 Circle Interchange Project to be completed, the federal law requires the project to be included in the region's long range plan, Go To 2040. I hereby request that the Chicago Metropolitan Agency for Planning (CMAP) update the long range plan to include this interchange project.

The I-90/94 at I-290 Circle Interchange Project initiated in May 2012 is a two year planning and design project which will identify the scope of improvements, potential construction costs and construction schedule. Phase I of the project is anticipated to be completed by May, 2013, with Phase II beginning upon completion of Phase I. Both phases are included in the Illinois Department of Transportation's (IDOT's) 2013-2018 Multi-Year Highway Improvement Program.

While construction is currently unfunded, financial strategies are being investigated under the current study. IDOT will continue to work with CMAP to address the federal fiscal constraint requirements and will provide the necessary information required to perform the air quality conformity analysis.

I look forward to working with you to move this project forward.

Sincerely,

Ann L. Schneider
Secretary

**CHICAGO OZONE NONATTAINMENT AREA
TRANSPORTATION CONFORMITY
INTER-AGENCY MEMORANDUM OF AGREEMENT**

WHEREAS, the Clean Air Act Amendments of 1990 [42 U.S.C. 7401-7671q] (CAA) require that each state develop a plan to assure that transportation projects, programs, and plans conform to air quality plans required under Section 110 of the CAA;

WHEREAS, the U.S. Environmental Protection Agency issued rules on August 15, 1997, requiring Illinois to submit a Transportation Conformity State Implementation Plan (SIP) revision and describing the required content of this SIP [40 CFR part 51];

WHEREAS, the Chicago Area Transportation Study, the Illinois Department of Transportation, the Illinois Environmental Protection Agency, the Federal Highway Administration, the Federal Transit Administration, and the U.S. Environmental Protection Agency have worked together to develop this Transportation Conformity SIP;

WHEREAS, upon acceptance of this document by the Chicago Area Transportation Study, the Illinois Department of Transportation and the Illinois Environmental Protection Agency and approval of this document by the U.S. Environmental Protection Agency, it shall become effective and be considered the Chicago Area Transportation Study, the Illinois Department of Transportation and the Illinois Environmental Protection Agency policy, consistent with federal law, in addressing transportation conformity issues in the Illinois counties specified in this document.

THEREFORE, the Illinois Environmental Protection Agency, the Illinois Department of Transportation, the Chicago Area Transportation Study, the U.S. Environmental Protection Agency, the Federal Transit Authority, and the Federal Highway Administration enter into this Memorandum of Agreement by signing below.



Mary A. Gade, Director
Illinois Environmental Protection Agency

8/13/98

Date



Kirk Brown, Secretary
Illinois Department of Transportation

8/31/98

Date

Thomas Walker, Commissioner
Chicago Department of Transportation
Vice Chairman, Policy Committee
Chicago Area Transportation Study

Date

David A. Ullrich, Acting Regional Administrator
Region V
United States Environmental Protection Agency

Date

Joel Ettinger, Regional Administrator
Federal Transit Administration

Date

Ronald C. Marshall, Division Administrator
Federal Highway Administration

Date

CHICAGO OZONE NONATTAINMENT AREA CONFORMITY AGREEMENT

CONFORMITY TO STATE IMPLEMENTATION PLANS OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS DEVELOPED, FUNDED OR APPROVED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT ACT

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CONFORMITY TO STATE IMPLEMENTATION PLANS OF
TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS DEVELOPED, FUNDED OR
APPROVED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT ACT

Acronyms

CAA - Clean Air Act as amended in 1990.

CATS - Chicago Area Transportation Study.

FHWA - Federal Highway Administration.

FIP - Federal Implementation Plan.

FTA - Federal Transit Administration.

HPMS - Highway Performance Monitoring System.

IDOT - Illinois Department of Transportation.

IEPA - Illinois Environmental Protection Agency.

NEPA - National Environmental Policy Act of 1969.

NIPC - Northeastern Illinois Planning Commission.

NOx - Oxides of Nitrogen.

SIP - State Implementation Plan.

STIP - Statewide Transportation Improvement Plan.

TCM - Transportation Control Measure.

TIP - Transportation Improvement Program.

USDOT - United States Department of Transportation.

USEPA - United States Environmental Protection Agency.

VMT - Vehicle Miles Traveled.

VOC - Volatile Organic Compounds.

100 Purpose.

The purpose of this agreement is to implement section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), and the related requirements of 23 U.S.C. 109(j), and regulations under 40 CFR part 93 subpart A, with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (USDOT), and by the Chicago Area Transportation Study (CATS) or other recipients of funds under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*). This agreement sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to this applicable implementation plan, developed and applicable pursuant to section 110 and Part D of the CAA.

101 Definitions.

Terms used but not defined in this agreement shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other United States Environmental Protection Agency (USEPA) regulations, other USDOT regulations, or other Air Pollution or transportation rules or agreements, in that order of priority.

Applicable implementation plan is defined in § 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been submitted or approved under § 110, submitted or promulgated under § 110(c), or submitted, promulgated or

approved pursuant to regulations promulgated under § 301(d) and which implements the relevant requirements of the CAA.

CAA means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

CATS is the Metropolitan Planning Organization (MPO) 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. 1607. It is the forum for cooperative transportation decision-making.

Cause or contribute to a new violation for a project means:

- (1) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented, or
- (2) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

Chicago Ozone Nonattainment area is defined as the counties of Cook, DuPage, Kane, Lake, McHenry, and Will and the townships of Oswego in Kendall County and Aux Sable and Goose Lake in Grundy County which have been designated as nonattainment for ozone under § 107 of the CAA.

Clean data means air quality monitoring data determined by USEPA to meet the requirements of 40 CFR part 58 that indicate attainment of the national ambient air quality standard.

Control strategy implementation plan revision is the applicable implementation plan which contains specific strategies for controlling emissions in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA §§ 182(b)(1), 182(c)(2)(A), 182(c)(2)(B)).

Design concept means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive busway, etc.

Design scope means the design aspects of a facility which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

Exempt Project means projects exempt from the conformity requirements or regional emission analysis as identified in Sections 123 through 125 of this agreement.

FHWA means the Federal Highway Administration of USDOT.

FHWA/FTA project, for the purpose of this agreement, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program or requires FHWA or FTA approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

FIP means a Federal Implementation Plan.

FTA means the Federal Transit Administration of USDOT.

Forecast period with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

HPMS means Highway Performance Monitoring System.

Highway project is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to: (1) connect logical termini and be of sufficient length to address environmental matters on a broad scope; (2) have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and (3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Horizon year is a year for which the transportation plan describes the envisioned transportation system in accordance with section 106 of this agreement.

IEPA means the Illinois Environmental Protection Agency.

IDOT means the Illinois Department of Transportation.

Increase the frequency or severity means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

Lapse means that the conformity determination of a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan or TIP.

ISTEA means the Intermodal Surface Transportation Efficiency Act of 1991.

Maintenance area means any geographic region previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under § 175A of the CAA, as amended.

Maintenance period with respect to a pollutant or pollutant precursor means that period of time beginning when USEPA approves a request under § 107(d) of the CAA for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.

Maintenance plan means an implementation plan under § 175A of the CAA, as amended.

Milestone has the meaning given in § 182(g)(1) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

Motor vehicle emissions budget is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.

National ambient air quality standards (NAAQS) are those standards established pursuant to § 109 of the CAA.

NEPA means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

NEPA process completion, for the purposes of this agreement, with respect to FHWA or FTA, means the point at which there is a specific action to make a formal final determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

NIPC means the Northeastern Illinois Planning Commission which is the agency responsible for developing long range land use planning, population and employment forecasts.

Project means a highway project or transit project.

Protective finding means a determination by USEPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

Public Involvement Plan means the procedures developed by CATS to collect early, continuing and meaningful input from the public to the transportation decision-making process in compliance with 23 CFR part 450.

Recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

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.

SIP means a State Implementation Plan.

Safety margin means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance.

Standard means a national ambient air quality standard.

Statewide transportation improvement program (STIP) means a staged, multi-year, intermodal program of transportation projects covering the State, which is consistent with the statewide transportation plan and metropolitan transportation plans, and developed pursuant to 23 CFR part 450.

Statewide transportation plan means the official intermodal statewide transportation plan that is developed through the statewide planning process for the State, developed pursuant to 23 CFR part 450.

Title 23 U.S.C. means title 23 of the United States Code.

Transit is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

Transit project is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to: (1) connect logical termini and be of sufficient length to address environmental matters on a broad scope; (2) have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and (3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Transportation control measure (TCM) is 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 CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or

congestion conditions. Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this agreement.

Transportation improvement program (TIP) means a staged, multi-year, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450.

Transportation plan means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

Transportation project is a highway project or a transit project.

USDOT means the United States Department of Transportation.

USEPA means the United States Environmental Protection Agency.

VM means Vehicle Miles Traveled.

VOC means Volatile Organic Compounds as defined in the CAA or any regulation promulgated thereunder.

Written commitment for the purposes of this agreement means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.

102 Applicability.

(a) Action applicability.

(1) Except as provided for in paragraph (c) of this section or sections 123-125 of this agreement, conformity determinations are required for:

- (i) The adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by CATS or USDOT;
- (ii) The adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by CATS, the State or USDOT; and
- (iii) The approval, funding, or implementation of FHWA/FTA projects

(2) Conformity determinations are not required under this agreement for individual projects which are not FHWA/FTA projects. However, section 119 of this agreement applies to such projects if they are regionally significant.

(b) Geographic applicability.

(1) The provisions of this agreement shall apply in the Chicago ozone nonattainment area for the pollutant(s) identified in paragraph (c)(1) of this section.

(2) Should the nonattainment area boundaries change, the parties to this agreement shall undertake an interagency consultation process in accordance with section 105 of this agreement to determine whether an amendment to this agreement is necessary, and if deemed necessary, to develop the needed amendment.

(3) During the time period between the designation of new nonattainment boundaries and the federal approval of an amended agreement, transportation conformity shall be determined (for the new subject areas) in accordance with 40 CFR Part 93, subpart A.

(c) Pollutant Applicability

(1) The provisions of this agreement apply with respect to emissions of volatile organic compounds and NO_x.

(2) Determination of transportation conformity for NO_x in this geographic area has been waived under Section 182(b)(1)(A) of the CAA. Should such a determination be required in the future, this agreement will be reviewed and amended, as appropriate. The emissions budget test, however, has not been waived and must be utilized once an emissions budget for NO_x is submitted for the nonattainment area.

(3) Should the determination of transportation conformity be required in the future for any other pollutant, this agreement will be reviewed and amended, as appropriate. During the time period between the designation of new nonattainment boundaries and the federal approval of an amended agreement, transportation conformity shall be determined (for the new subject areas) in accordance with 40 CFR Part 93, subpart A.

(d) Limitations.

(1) Projects subject to this agreement for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the most recent three year period: NEPA process completion; start of final design; acquisition of a portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.

- (2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, or if no major steps to advance the project have occurred within the most recent three year period.

103 Priority.

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

104 Frequency of conformity determinations.

(a) Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.

(b) Frequency of conformity determinations for transportation plans.

(1) Each new transportation plan must be demonstrated to conform before the transportation plan is approved by CATS or accepted by USDOT.

(2) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by CATS or accepted by USDOT, unless the revision merely adds or deletes exempt projects listed in section 123 of this agreement. The conformity determination must be based on the transportation plan and the revision taken as a whole.

(3) CATS and USDOT must determine the conformity of the transportation plan no less frequently than every three years. If more than three years elapse after USDOT's conformity determination without CATS and USDOT determining conformity of the transportation plan, the existing conformity determination will lapse.

(c) Frequency of conformity determinations for transportation improvement programs.

(1) A new TIP must be demonstrated to conform before the TIP is approved by CATS, submitted by the State and accepted by USDOT.

(2) TIP changes which add or delete non-exempt projects or which cause non-exempt projects to cross analysis years require a new conformity determination for the entire TIP before the change is approved by CATS, submitted by the State and accepted by USDOT. Consultation as described in this agreement will be used to determine the extent of analyses necessary to make such a new conformity determination.

(3) CATS and USDOT must determine the conformity of the TIP no less frequently than every three years. If more than three years elapse after USDOT's conformity determination without CATS and USDOT determining conformity of the TIP, the existing conformity determination will lapse.

(4) After CATS adopts a new or revised transportation plan, conformity of the TIP must be redetermined by CATS and USDOT within six months from the date of USDOT's conformity determination for the transportation plan, unless the new or revised plan merely adds or deletes exempt projects listed in sections 123 and 124 of this agreement. Otherwise, the existing conformity determination for the TIP will lapse.

(d) Projects.

FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if three years have elapsed since the most recent major step to advance the project (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred.

(e) Triggers for transportation plan and TIP conformity determinations.

Conformity of existing transportation plans and TIPs must be redetermined within 18 months of any one of the following, or the existing conformity determination will lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by CATS and USDOT:

- (1) The date of the State's initial submission to USEPA of each control strategy implementation plan or maintenance plan establishing a motor vehicle emissions budget; or
- (2) USEPA approval of a control strategy implementation plan revision or maintenance plan which revises a motor vehicle emissions budget; or
- (3) USEPA approval of an applicable implementation plan revision that reduces emissions credits attributable to TCMs; or
- (4) USEPA promulgation of an applicable federal implementation plan which establishes or revises a motor vehicle emissions budget or adds, deletes, or changes TCMs.

105 Consultation.

(a) General.

This agreement provides procedures for interagency consultation (Federal, State, and local) and resolution of conflicts. Such consultation procedures shall be undertaken by CATS, IDOT, IEPA, FHWA, FTA and USEPA before making conformity determinations.

(b) Interagency consultation procedures:

(1) General factors.

(A) Representatives of CATS, IEPA, and IDOT shall undertake an interagency consultation process in accordance with this section with each other and with local or regional offices of FHWA, FTA and USEPA on all conformity determinations as required by Title 23 CFR. CATS shall be the lead agency responsible for preparing the final conformity document or decision and for the interagency consultation process with respect to conformity determinations. In the case of non-metropolitan areas that are part of the ozone nonattainment area, IDOT delegates to CATS the responsibility for conformity determinations and interagency consultation for these areas with respect to conformity determinations under this agreement.

(B) Agencies entitled to participate in the interagency consultation process include CATS, FHWA, FTA, IDOT, IEPA, and USEPA.

(C) It shall be the role and responsibility of each lead agency in an interagency consultation process, to confer with all other agencies identified under subparagraph (B) with an interest in the document to be developed, provide all appropriate information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, conduct the consultation process described in the applicable paragraphs of section 105(b) of this agreement, where required, assure policy-level contact with those agencies, and, prior to taking any action, consider the views of each such agency and respond to those views in a timely, substantive manner prior to any final decision on such document, and assure that such views and responses are made part of the record of any decision or action. It shall be the role and responsibility of each agency specified in subparagraph (B), when not fulfilling the role and responsibilities of a lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a timely manner, attend consultation and decision meetings, assure policy-level contact with other participants, provide input on any area of substantive expertise or responsibility (including planning assumptions, modeling, information on status of TCM implementation, and interpretation of regulatory or other requirements), and provide technical assistance to the lead agency or consultation process in accordance with this paragraph when requested.

(D) Specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:

- (i) IEPA shall be responsible for providing (I) emissions inventories, (II) emissions budgets, (III) air quality modeling, (IV) attainment demonstrations, (V) control

strategy implementation plan revisions, (VI) regulatory TCMs, and (VII) updated motor vehicle emissions factors;

(ii) CATS shall be responsible for providing (I) transportation plans and TIPs, (II) VMT forecasts for the transportation plan, TIP, and conformity analysis, (III) evaluations of TCM transportation impacts, (IV) transportation data, planning assumptions, socioeconomic data and providing such data and planning assumptions to IEPA for use in air quality analysis, (V) the monitoring results of regionally significant projects, (VI) transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs needed for conformity assessments, and (VII) documentation of the conformity process, analysis, and findings with respect to determinations of conformity under this agreement;

(iii) IDOT shall be responsible for providing (I) Statewide transportation plans and STIPs, (II) VMT statistics for the purpose of tracking transportation performance and, (III) information regarding the status of draft and final project environmental documents to other agencies.

Generalized structure:

(2)(A) The consultation process shall utilize the committee, subcommittee, task force structure, and the CATS Public Involvement Plan established by CATS as a primary mechanism to provide policy and technical input with respect to the development of the transportation plan, the TIP, any amendments or revisions thereto, and TCMs developed as part of the transportation plan and the TIP.

(B) Policy level direction and oversight of the consultation process shall be provided by the CATS Policy Committee, the Secretary of Transportation and the Director of IEPA or their designees. The consultation process shall be a continuing and ongoing process involving discussion, determination, and decisions on policy and technical issues relating to determinations of conformity under this agreement.

Consultation on the conformity document:

(3)(A) It shall be the affirmative responsibility of the agency with the responsibility for preparing the final document subject to the interagency consultation process to initiate the process by preparing an initial draft of the document, together with necessary supporting information, notifying other potential participants in the consultation process, circulating the draft document to those expressing an interest in participating, and convening consultation meetings early in the process of decision on the final document. Such lead agency shall assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.

(B) Regular consultation on major activities such as the development of a transportation plan, the development of a TIP, or any determination of conformity on transportation plans or TIPs, shall include meetings prior to the date a final document is required (or the date on which such agency begins its own work on such document) and continuing at regular scheduled intervals. Such meetings shall be attended by representatives at the policy level of each agency. In addition, technical meetings of the appropriate working group(s) shall be convened as necessary.

(C) Each lead agency with the responsibility for preparing the final document subject to the interagency consultation process shall confer with all other agencies identified under paragraph (1) with an interest in the document to be developed, provide all appropriate information to those agencies needed for meaningful input, and, prior to taking any action, consider the views of each such agency and respond to those views in a timely, substantive manner prior to any final decision on such document. Such views and response shall be made part of the record of any decision or action.

(c) Interagency consultation procedures: Specific processes.

(1) An interagency consultation process in accordance with paragraph (b) involving CATS, IEPA, IDOT, FHWA, FTA, and USEPA shall be undertaken for the following:

(i) Evaluating and choosing each model (or models) and associated methods and assumptions to be used in regional transportation and regional emissions analyses;

(ii) Determining which transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those defined as regionally significant in the definition section), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP;

(iii) Evaluating which projects should be included in the emissions modeling process;

(iv) Making a determination, as required by section 113(c)(1) of this agreement, whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This consultation process shall also consider whether delays in TCM implementation would warrant revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Development of a motor vehicle emissions budget;

(vi) Development of a methodology for the measurement and tracking of vehicle miles traveled within the nonattainment area.

(2) An interagency consultation process in accordance with paragraph (b) involving CATS, IDOT, and IEPA shall be undertaken for evaluating events which will trigger new conformity determinations in addition to those triggering events established in section 104 of this agreement.

(3) An interagency consultation process in accordance with paragraph (b) involving CATS, IDOT, and IEPA shall be undertaken to assure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including all those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act, are disclosed to CATS on a regular basis, and to assure that any changes to those plans are immediately disclosed.

(4) An interagency consultation process in accordance with paragraph (b) involving CATS and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act shall be undertaken to define for modeling purposes the location and design concept and scope of projects which are disclosed to CATS as required by paragraph (c)(3) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of section 120 of this agreement, to be initiated by CATS.

(d) Resolving conflicts.

(1) Conflicts between IEPA and the affected agencies regarding conformity determinations which cannot be resolved shall be submitted to the Governor for resolution. Should IEPA maintain specific concerns regarding CATS's plan or program conformity determination, IEPA will notify CATS and IDOT of its concerns in writing. CATS shall be responsible for responding to IEPA's concerns in writing. Once IEPA receives a letter of response from CATS, and should IEPA determine that the letter of response does not adequately resolve IEPA's concerns, IEPA will have fourteen days from the date stamped as "received" on CATS's letter of response to appeal to the Governor. IEPA must provide notice of any appeal under this subsection to CATS and IDOT. If IEPA does not appeal to the Governor within 14 days, CATS or IDOT may proceed with the final conformity determination.

(2) The Governor may delegate the 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 head or staff of IEPA, IDOT or the chairman of the policy committee for CATS.

(e) Public consultation.

Public consultation procedures for conformity determinations on transportation plans and programs shall be conducted in accordance with the approved CATS Public Involvement Plan.

106 Content of transportation plans.

(a) Transportation plans adopted after January 1, 1997, in the Chicago Ozone nonattainment area, must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) CATS shall develop the transportation plan and, after consultation in accordance with section 105 of this agreement, choose any years to be horizon years, subject to the following restrictions:

(i) Horizon years may be no more than 10 years apart.

(ii) The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model, subject to availability of census data used to validate portions of the transportation demand planning model;

(iii) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year; and

(iv) The last horizon year must be the last year of the transportation plan's forecast period.

(2) For these horizon years:

(i) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and the consultation requirements specified by section 105 of this agreement;

(ii) The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for areawide transportation analysis in use by CATS. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies that are

sufficient for modeling of their transit ridership. Additions and modifications to the transportation network shall be described sufficiently to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

(iii) Other future transportation policies, requirements, services, and activities, including transportation management and intermodal activities, shall be described.

(b) Savings.

The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

107 Relationship of transportation plan and TIP conformity with the NEPA process.

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in sections 109 - 117 of this agreement for projects not from a TIP before NEPA process completion.

108 Fiscal constraints for transportation plans and TIPs.

Transportation plans and TIPs shall be fiscally constrained consistent with USDOT's metropolitan planning regulations at 23 CFR part 450 in order to be found in conformity.

109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

(a) In order for each transportation plan, program, and FHWA/FTA project to be found to conform, CATS and USDOT must demonstrate that the applicable criteria and procedures in this subpart are satisfied, and CATS and USDOT must comply with all applicable conformity requirements of implementation plans and this agreement and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the time period in which the conformity determination is made, and the relevant pollutant(s), and the status of the implementation plan.

(b) Table 1 in this paragraph indicates the criteria and procedures in sections 110 through 117 of this agreement which apply for transportation plans, TIPs, and FHWA/FTA projects. Paragraph

(c) of this section explains when the budget and emission reduction tests are required for each pollutant. Table 1 follows:

Table 1. -- Conformity Criteria

All Actions at all times:

Section 110	Latest planning assumptions
Section 110	Latest emissions model
Section 110	Consultation

Transportation Plan:

Section 113(b)	TCMs
Section 116 or 117	Emissions budget or emission reduction

TIP:

Section 113(c)	TCMs
Section 116 or 117	Emissions budget or emission reduction

Project (From a Conforming Plan and TIP):

Section 114	Currently conforming plan and TIP
Section 115	Project from a conforming plan and TIP

Project (Not From a Conforming Plan and TIP):

Section 113(d)	TCMs
Section 114	Currently conforming plan and TIP
Section 116 or 117	Emissions budget or emission reduction

(c) Ozone nonattainment and maintenance areas.

In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following:

(1) In ozone nonattainment and maintenance areas the budget test must be satisfied as required by section 116 of this agreement for conformity determinations made:

- (i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to USEPA , unless USEPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or**
- (ii) After USEPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.**

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision (usually moderate and above areas), the emission reduction tests must be satisfied as required by section 117 of this agreement for conformity determinations made:

- (i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to USEPA , unless USEPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or**
- (ii) If USEPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved implementation plan or a previously submitted control strategy implementation plan revision or maintenance plan.**

(4) Notwithstanding paragraphs (c)(1) and (c)(2) of this section, moderate and above ozone nonattainment areas with three years of clean data that have not submitted a maintenance plan and that USEPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements must satisfy one of the following requirements:

- (i) The emission reduction tests as required by section 117 of this agreement;**
- (ii) The budget test as required by section 116 of this agreement, using the motor vehicle emissions budgets in the submitted control strategy implementation plan (subject to the timing requirements of paragraph (c)(1) of this section); or**

(iii) The budget test as required by section 116 of this agreement, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the USEPA rulemaking that determines that the area has clean data.

110 Criteria and procedures: Latest planning assumptions.

(a) The conformity determination, with respect to all other applicable criteria in sections 111 through 117 of this agreement, must be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section.

(b) Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by CATS or other agency authorized to make such estimates and utilized by CATS. Conformity analyses which were started before the availability of the latest planning assumptions may continue to use the previous planning assumptions available at the time conformity analyses were commenced, subject to the consultation procedures in section 105 of this agreement.

(c) The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

(d) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(e) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures which have already been implemented.

(f) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by section 105 of this agreement.

111 Criteria and procedures: Latest emissions model.

(a) During all periods the conformity determination must be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by USEPA for use in the preparation or revision of implementation plans in the State or area is used for the conformity analysis.

(b) Transportation plan, TIP and Project. Conformity analyses for which the emissions analysis was begun before the Federal Register notice of availability of the latest emission model, or

during the grace period announced in such notice, may continue to use the previous version of the model for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the Federal Register notice of availability and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document.

112 Criteria and procedures: Consultation.

Conformity must be determined according to the consultation procedures in this agreement and in the applicable implementation plan, and according to the CATS Public Involvement Plan. Until the implementation plan revision required by §51.390 is fully approved by USEPA, the conformity determination must be made according to section 105(a)(2) and (e) and the requirements of 23 CFR part 450.

113 Criteria and procedures: Timely implementation of TCMs.

(a) The transportation plan, TIP, or any FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan. All projects which are TCMs must come from a plan and TIP.

(b) For transportation plans, this criterion is satisfied if the following two conditions are met:

(1) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan, which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws, consistent with schedules included in the applicable implementation plan.

(2) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

(c) For TIPs, this criterion is satisfied if the following conditions are met:

(1) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs, which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws, are on or ahead of the schedule established in the applicable implementation plan. If such TCMs are behind the schedule established in the applicable implementation plan, CATS and USDOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If the federal funding has not been obligated for TCMs in the applicable implementation plan which were previously programmed for federal funding and the TCMs are behind schedule and the obstacles to the schedule cannot be overcome, the TIP cannot be found to conform unless the funds intended for those TCMs are allocated:

(i) To other TCMs in the TIP; or

(ii) To projects in the TIP eligible as TCMs; or

(iii) To projects eligible for federal funding intended for air quality improvement projects.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

(d) For FHWA/FTA projects which are not from a conforming transportation plan and TIP, the criterion in paragraphs (b) and (c) above are satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

114 Criteria and procedures: Currently conforming transportation plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

(a) Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once USDOT concurs in the finding of conformity for the current plan or TIP. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of section 104 of this agreement.

(b) This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of this subpart and section 113 of this agreement are satisfied.

115 Criteria and procedures: Projects from a plan and TIP.

(a) The project must come from a conforming transportation plan and TIP. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of section 109(b) of this agreement for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (b) of this section and from a conforming TIP if it meets the requirements of paragraph (c) of this section. Special provisions for TCMs in an applicable implementation plan are provided in paragraph (d) of this section.

(b) A project is considered to be from a conforming transportation plan if one of the following conditions applies:

- (1) For projects which are required to be identified in the transportation plan in order to satisfy section 106 ("Content of transportation plans") of this agreement, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or
- (2) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

(c) A project is considered to be from a conforming TIP if the following conditions are met:

- (1) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the regional emissions, and the project design concept and scope have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and
- (2) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by section 122(a) of this agreement in order for the project to be considered from a conforming TIP. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

(d) This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan. All projects which are TCMs must come from a plan and TIP.

116 Criteria and procedures: Motor vehicle emissions budget.

(a) Total emissions from the transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan. This criterion applies as described in section 109(c) of this agreement. This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in paragraph (c) of this section are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.

(b) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor

vehicle emissions budget(s), for the last year of the transportation plan's forecast period, and for any intermediate years as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows:

(1) Until a maintenance plan is submitted:

(i) Emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) must be less than or equal to that year's motor vehicle emissions budget(s); and

(ii) Emissions in years for which no motor vehicle emissions budget(s) are specifically established must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year. For example, emissions in years after the attainment year for which the implementation plan does not establish a budget must be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

(2) When a maintenance plan has been submitted:

(i) Emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets. If the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which could cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. The interagency consultation process required by section 105 of this agreement shall determine what must be considered in order to make such a finding;

(ii) For years after the last year of the maintenance plan, emissions must be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan; and

(iii) If an approved control strategy implementation plan has established motor vehicle emissions budgets for years in the timeframe of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years.

(c) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant or pollutant precursor in section 102(b) of this agreement for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

(d) Consistency with the motor vehicle emissions budget(s) must be demonstrated by including emissions from the entire transportation system, including all regionally significant projects

contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan.

(1) Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional emissions analysis that meets the requirements of sections 120 and 105(c)(1)(i) of this agreement.

(2) The regional emissions analysis (which may include both network and off-network models) may be performed for any years in the timeframe of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the attainment year (if it is in the timeframe of the transportation plan) and the last year of the plan's forecast period. Emissions in years for which consistency with motor vehicle emissions budgets must be demonstrated, as required in paragraph (b) of this section, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(e) Motor vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance plans.

(1) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans must be demonstrated if USEPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes, or beginning 45 days after the control strategy implementation plan revision or maintenance plan has been submitted (unless USEPA has declared the motor vehicle emissions budget(s) inadequate for transportation conformity purposes). However, submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the period of years addressed by the approved implementation plan.

(2) If USEPA has declared an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes, the inadequate budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there are no previous approved implementation plans or implementation plan submissions with motor vehicle emissions budgets, the emission reduction tests required by section 117 of this agreement must be satisfied.

(3) If USEPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes more than 45 days after its submission to USEPA, and conformity of a transportation plan or TIP has already been determined by USDOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy the requirements of sections 114 and 115 of this agreement, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

(4) USEPA will not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

(i) The submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his or her designee) and was subject to a state public hearing;

(ii) Before the control strategy implementation plan or maintenance plan was submitted to USEPA , consultation among federal, state, and local agencies occurred; full implementation plan documentation was provided to USEPA ; and USEPA 's stated concerns, if any were addressed;

(iii) The motor vehicle emissions budget(s) is clearly identified and precisely quantified;

(iv) The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission);

(v) The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

(vi) Revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to establish safety margins; and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

(5) Before determining the adequacy of a submitted motor vehicle emissions budget, USEPA will review the State's compilation of public comments and response to comments that are required to be submitted with any implementation plan. USEPA will document its consideration of such comments and responses in a letter to the state indicating the adequacy of the submitted motor vehicle emissions budget.

(6) When the motor vehicle emissions budget(s) used to satisfy the requirements of this section are established by an implementation plan submittal that has not yet been approved or disapproved by USEPA , CATS and USDOT's conformity determinations will be deemed to be a statement that CATS and USDOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget will cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

117 Criteria and procedures: Emission reductions in areas without motor vehicle emissions budgets.

(a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must contribute to emissions reductions. This criterion applies as described in section 109 (c) through (g) of this agreement. It applies to the net effect of the action (transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

(b) This criterion is met in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA §182 (b)(1) if a regional emissions analysis that satisfies the requirements of section 120 of this agreement and paragraphs (e) through (g) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (d) of this section:

(1) The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(2) the emissions predicted in the "Action" scenario are lower than 1990 emissions by any nonzero amount.

(c) Pollutants. The regional emissions analysis must be performed for the following pollutants:

(1) VOC in ozone areas;

(2) This agreement does not apply to emissions of oxides of nitrogen (NOx) because USEPA has approved a waiver pursuant to Section 182(b) of the CAA. This agreement will be amended to establish procedures to implement transportation conformity, as applicable, with respect to emissions of NOx, if the USEPA withdraws the NOx waiver for the area.

(d) Analysis years. The regional emissions analysis must be performed for analysis years that are no more than ten years apart. The first analysis year must be no more than five years beyond the year in which the conformity determination is being made. The last year of transportation plan's forecast period must also be an analysis year.

(e) "Baseline" scenario. The regional emissions analysis required by paragraphs (b) and (c) of this section must estimate the emissions that would result from the "Baseline" scenario in each analysis year. The "Baseline" scenario is the future transportation system that will result from current programs, including the following (except regional emissions analysis as listed in section 123 of this agreement and projects exempt from regional emissions analysis as listed in section 124 of this agreement need not be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first year of the previously conforming transportation plan and/or TIP; or have completed the NEPA process.

(f) "Action" scenario. The regional emissions analysis required by paragraphs (b) and (c) of this section must estimate the emissions that would result from the "Action" scenario in each analysis years. The "Action" scenario must be defined for each of the analysis years. The "Action" scenario is the transportation system that would result from the implementation of the proposed action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The "Action" scenario must include the following (except that exempt projects listed in section 123 of this agreement and projects exempt from regional emissions analysis as listed in section 124 of this agreement need not be explicitly considered):

(1) All facilities, services, and activities in the 'Baseline' scenario;

(2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is contained in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to CATS, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination;

(4) The incremental effects of any travel demand management programs and transportation system management activities known to CATS, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(g) Projects not from a conforming transportation plan and TIP. For the regional emissions analysis required by paragraphs (b) and (c) of this section, if the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

118 Consequences of control strategy implementation plan failures.

(a) Disapprovals.

(1) If USEPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under §179 (b)(1) of the CAA. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements as the original submittal was intended to fulfill is submitted and conformity to this submission is determined.

(2) If USEPA disapproves a submitted control strategy implementation plan revision without making a protective finding, then beginning 120 days after such disapproval, only projects in the first three years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning 120 days after disapproval without a protective finding, no project, not in the first three years of the currently conforming plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined. During the first 120 days following USEPA's disapproval without a protective finding, transportation plan, TIP, and project conformity determinations shall be made using the motor vehicle emissions budget(s) in the disapproved control strategy implementation plan, unless another control strategy implementation plan revision has been submitted and its motor vehicle emissions budget(s) applies for transportation conformity purposes, pursuant to section 109 of this agreement.

(3) In disapproving a control strategy implementation plan revision, USEPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

(b) Failure to submit and incompleteness. In areas where USEPA notifies the State, CATS, and USDOT of the State's failure to submit a control strategy implementation plan or submission of an incomplete control strategy implementation plan revision (either of which initiates the sanction process under CAA §§ 179 or 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for

such failure under §179(b)(1) of the CAA, unless the failure has been remedied and acknowledged by a letter from the USEPA Regional Administrator.

(c) Federal implementation plans. If USEPA promulgates a Federal implementation plan that contains motor vehicle emissions budget(s) as a result of a State failure, the conformity lapse imposed by this section because of that State failure is removed.

119 Requirements for adoption or approval of projects by recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws.

No recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(a) The project was included in the most recently conforming transportation plan and the first three years of the TIP (or the conformity determination's regional emissions analyses), even if conformity status is currently lapsed; and the project's design concept and scope has not changed significantly from those analyses; or

(b) There is a currently conforming transportation plan and TIP, and a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of section 116 and/or section 117 of this agreement for a project not from a conforming transportation plan and TIP).

120 Procedures for determining regional transportation-related emissions.

(a) General requirements.

(1) The regional emissions analysis required by sections 116 and 117 of this agreement for the transportation plan, TIP, or project not from a conforming plan and TIP must include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include FHWA/FTA projects proposed in the transportation plan and TIP, and all other regionally significant projects which are disclosed to CATS as required by section 105 of this agreement. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

(2) The emissions analysis may not include for emissions reduction credit any TCMs or other measures in the applicable implementation plan which have been delayed beyond the

scheduled date(s) until such time as their implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(3) Emissions reduction credit from projects, programs, or activities which require a regulatory action in order to be implemented may not be included in the emissions analysis unless:

- (i) the regulatory action is already adopted by the enforcing jurisdiction;
- (ii) The project, program, or activity is included in the applicable implementation plan;
- (iii) The control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget (s) for the purposes of section 116 of this agreement contains a written commitment to the project, program, or activity by the agency with authority to implement it; or
- (iv) USEPA has approved an opt-in to a Federally enforced program, USEPA has promulgated the program (if the control program is a Federal responsibility, such as tailpipe standards), or if the CAA requires the program without need for individual State action and without any discretionary authority for USEPA to set its stringency, delay its effective date, or not implement the program.

(4) Emissions reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities.

- (i) Persons or entities voluntarily committing to control measures must comply with the obligations of such commitments.
- (ii) Written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and such commitments must be fulfilled.

(5) A regional emissions analysis for the purpose of satisfying the requirements of section 117 of this agreement must make the same assumptions in both the 'Baseline' and 'Action' scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.

(6) The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable implementation plan. All

other factors , for example the fraction of travel in a hot stabilized engine mode, must be consistent with the applicable implementation plan, unless modified after interagency consultation according to section 105 of this agreement to incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(7) Reasonable methods shall be used to estimate nonattainment or maintenance area VMT on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

(b) Regional emissions analysis in serious, severe, and extreme ozone nonattainment areas must meet the requirements of paragraphs (b)(1) through (3) of this section if their metropolitan planning area contains an urbanized area population over 200,000.

(1) By January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations must be made at a minimum using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation. These procedures, methods, and practices are available from USDOT and will be updated periodically. Agencies must discuss these modeling procedures and practices through the interagency consultation process, as required by section 105(c)(1)(i) of this agreement. Network-based travel models must at a minimum satisfy the following requirements:

(i) Network-based model(s) must be validated against observed counts (peak and off-peak, if possible) for a base year that is not more than 10 years prior to the date of the conformity determination. Model forecasts must be analyzed for reasonableness and compared to historical trends and other factors, and the results must be documented:

(ii) Land use, population, employment, and other network-based travel model assumptions must be documented and based on the best available information;

(iii) Scenarios of land development and use must be consistent with the future transportation system alternatives for which emissions are being estimated. The distribution of employment and residences for different transportation options must be reasonable;

(iv) A capacity sensitive highway assignment methodology must be used, and emissions estimates must be based on a methodology which differentiates between peak and off-peak link volumes and speeds and uses speeds based on final assigned volumes;

(v) Zone to zone travel impedance's used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits; and

(vi) Network-based travel models must be reasonably sensitive to changes in the time (s), cost (s), and other factors affecting travel choices.

(2) Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.

(3) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the nonattainment or maintenance area and for the functional classes of roadways included in HPMS for urban areas which are sampled on a separate urban area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures of section 105 of this agreement.

(c) Reliance on previous regional emissions analysis.

(1) The TIP may be demonstrated to satisfy the requirements of section 116 of this agreement ("Motor vehicle emissions budget") or section 117 of this agreement ("Emission reductions in areas without motor vehicle emissions budgets") without new regional emissions analysis if the regional emissions analysis already performed for the plan also applies to the TIP. This requires a demonstration that:

(i) The TIP contains all projects which must be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan;

(ii) All TIP projects which are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination; and

(iii) The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

(2) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of sections 116 or 117 of this agreement without additional regional emissions analysis if allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan, and if the project is either:

(i) Not regionally significant; or

(ii) Included in the conforming transportation plan (even if it is not specifically included in the latest conforming TIP) with design concept and scope adequate to determine its contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination, and the design concept and scope of the project is not significantly different from that described in the transportation plan.

121 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).

(a) In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), CATS and USDOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to CATS and USDOT in the emission budget for conformity purposes, CATS may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

(1) Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone; or

(2) Emissions from all sources will result in achieving attainment prior to the attainment deadline and/or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or

(3) Emissions will be lower than needed to provide for continued maintenance.

(b) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without an implementation plan revision or an applicable implementation plan which establishes mechanisms for such trades.

(c) If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, CATS and USDOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

122 Enforceability of design concept and scope and project-level mitigation and control measures

- (a) Prior to determining that a transportation project is in conformity, CATS, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and are included in the project design concept and scope which is used in the regional emissions analysis required by section 116 ("Motor vehicle emissions budget") of this agreement and section 117 ("Emission reductions in areas without motor vehicle emissions budgets") of this agreement.
- (b) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.
- (c) Written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.
- (d) If CATS or the project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the emission budget requirements of section 116, and emission reduction requirements of section 117 of this agreement are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under section 105 of this agreement. CATS and USDOT must find that the transportation plan and TIP still satisfy the applicable requirements of sections 116 and/or 117 of this agreement, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid. This finding is subject to the applicable public consultation requirements in section 105(e) of this agreement for conformity determinations for projects.

123 Exempt projects.

Notwithstanding the other requirements of this agreement, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if CATS in consultation with other agencies (see section 105(c)(1)(iii)) of this agreement, the USEPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. IDOT, IEPA and CATS must assure that exempt projects do not interfere with TCM implementation.

Table 2. Exempt Projects

Safety

Railroad/highway crossing

Hazard elimination program

Safer non-Federal-aid system roads

Shoulder improvements

Increasing sight distance

Safety improvement program

Traffic control devices and operating assistance other than signalization projects

Railroad/highway crossing warning devices

Guardrails, median barriers, crash cushions

Pavement resurfacing or rehabilitation

Pavement marking demonstration

Emergency relief (23 U.S.C. 125)

Fencing

Skid treatments

Safety roadside rest areas

Adding medians

Truck climbing lanes outside the urbanized area

Lighting improvements

Widening narrow pavements or reconstructing bridges (no additional travel lanes)

Emergency truck pullovers

Mass Transit

Operating assistance to transit agencies

Purchase of support vehicles

Rehabilitation of transit vehicles

Purchase of office, shop, and operating equipment for existing facilities

Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.)

Construction or renovation of power, signal, and communications systems

Construction of small passenger shelters and information kiosks

Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures)

Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way

Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet

Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771

Air Quality

Continuation of ride-sharing and van-pooling promotion activities at current levels

Bicycle and pedestrian facilities

Other

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

Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action

Noise attenuation

Emergency or hardship advance land acquisitions (23 CFR part 712 or 23 CFR part 771)

Acquisition of scenic easements

Plantings, landscaping, etc.

Sign removal

Directional and informational signs

Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).

Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational, or capacity changes

124 Projects exempt from regional emissions analyses.

Notwithstanding the other requirements of this agreement, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. 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 of this section is not exempt from regional emissions analysis if CATS in consultation with other agencies (see section 105(c)(1)(iii)) of this agreement, the USEPA, 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.

Table 3. Projects Exempt from Regional Emissions Analyses

Intersection channelization projects

Intersection signalization projects at individual intersections

Interchange reconfiguration projects

Changes in vertical and horizontal alignment

Truck size and weight inspection stations

Bus terminals and transfer points

Commuter Parking projects located at Transit Facilities

125 Traffic Signal synchronization projects

Traffic signal synchronization projects may be approved, funded and implemented without satisfying the requirements of this agreement. However, all subsequent regional emissions analyses required by sections 116 and 117 of this agreement for transportation plans, TIPs, or projects not from a conforming plan and TIP must include traffic signal synchronization projects.