

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE B: AIR POLLUTION  
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 255  
GENERAL CONFORMITY: CRITERIA AND PROCEDURES

Section	
255.100	Purpose
255.110	Federal Requirement
255.120	Applicability
255.140	Definitions
255.150	Abbreviations
255.160	Incorporations by Reference
255.170	Activities Exempt from Conformity Analysis
255.180	Conformity Analysis
255.190	Reporting Requirements
255.200	Public Participation
255.210	Frequency of Conformity Determinations
255.220	Criteria for Determining Conformity of General Federal Actions
255.230	Procedures for Conformity Determinations of General Federal Actions
255.240	Mitigation of Air Quality Impacts

AUTHORITY: Authorized and implemented by Sections 4 and 9.1 of the Environmental Protection Act [415 ILCS 5/4 and 9.1].

SOURCE: Adopted at 21 Ill. Reg. 3581, effective March 6, 1997

**Section 255.100      Purpose**

The purpose of this Part is to establish criteria and procedures substantively similar to 40 CFR part 51, Subpart W whereby Federal agencies required to make conformity determinations of Federal actions to Illinois= air quality implementations plans may consult and coordinate with the IEPA.

**Section 255.110      Federal Requirement**

- a) Section 176(b)(1) of the Federal Clean Air Act (CAA) requires that any department, agency, instrumentality of the Federal Government that engages in, supports in any way, provides financial assistance for, licenses, permits, or approves any activity must conform to an applicable implementation plan.
- b) A Federal agency must make a determination that a Federal action conforms to the applicable implementation plan before the action is taken.
- c) Subsection (b) of this Section does not include Federal actions where either:
  - 1) A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final environmental assessment (EA), environmental

impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994;

- 2) Prior to January 31, 1994, an EA was commenced or a contract was awarded to develop the specific environmental analysis;
  - 3) Sufficient environmental analysis is completed by March 15, 1994, so that the Federal agency may determine that the Federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the Federal agency's affirmative obligation under section 176(c) of the CAA; or
  - 4) A written determination of conformity under section 176(c) of the CAA has been made by the Federal agency responsible for the Federal action by March 15, 1994.
- d) Notwithstanding any provisions of this Part, a determination that an action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the NEPA, or the CAA.

#### **Section 255.120      Applicability**

- a) Conformity determinations for Federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.) are not subject to the requirements of this Part.
- b) For Federal actions not covered by subsection (a) of this Section and not exempt pursuant to Section 255.170 of this Part, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates in subsection (b)(1) or (b)(2) of this Section:

- 1) Nonattainment Areas:

	Tons/Year
Ozone (VOC's or NO <sub>x</sub> ):	
Serious NAA's	50
Severe NAA's	25
Extreme NAA's	10
Other ozone NAA's outside an ozone transport region	100
Marginal and moderate NAA's inside an ozone transport region:	
VOC	50
NO <sub>x</sub>	100

Carbon monoxide:	
All NAA's	100
SO <sub>2</sub> or NO <sub>2</sub> :	
All NAA's	100
PM-10:	
Moderate NAA's	100
Serious NAA's	70
Pb:	
All NAA's	25
2) Maintenance Areas:	

	Tons/Year
Ozone (NO <sub>x</sub> ) SO <sub>2</sub> or NO <sub>2</sub> :	
All maintenance areas	100
Ozone (VOC's):	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide:	
All maintenance areas	100
PM-10:	
All maintenance areas	100
Pb:	
All maintenance areas	25

## Section 255.140 Definitions

Terms used but not defined in this Part shall have the meaning given to them by the CAA and USEPA's regulations (40 CFR Chapter I) in that order of priority:

AAffected Federal land manager@ means the Federal agency or the Federal official charged with direct responsibility for management of an area designated as Class I under the CAA (42 U.S.C. 7472) that is located within 100 km of the proposed Federal action.

AApplicable implementation plan or applicable SIP@ means the portion (or portions) of the SIP or most recent revision thereof, which has been approved under section 110 of the CAA, or promulgated under section 110(c) of the CAA (Federal implementation plan), or promulgated or approved pursuant to regulations promulgated under section 301(d) of the CAA and which implements the relevant requirements of the CAA.

**AAreawide air quality modeling analysis@** means an assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

**ACause or contribute to a new violation@** means a Federal action that:

Causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the Federal action were not taken; or

Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

**ACaused by@**, as used in the terms "direct emissions" and "indirect emissions@", means emissions that would not otherwise occur in the absence of the Federal action.

**ACriteria pollutant or standard@** means any pollutant for which there is established a NAAQS at 40 CFR 50, incorporated by reference in Section 255.160 of this Part.

**ADirect emissions@** means those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and occur at the same time and place as the action.

**AEmergency@** means a situation where extremely quick action on the part of the Federal agencies involved is needed and where the timing of such Federal activities makes it impractical to meet the requirements of this Part, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations.

**AEmissions budgets@** are those portions of the applicable SIP's projected emissions inventories that describe the levels of emissions (mobile, stationary, area, etc.) that provide for meeting reasonable further progress milestones, attainment, and/or maintenance for any criteria pollutant or its precursors.

**AEmissions offsets@**, for purposes of Section 255.220 of this Part, are emissions reductions which are quantifiable, consistent with the applicable SIP attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable SIP provisions, enforceable at both the State and Federal levels, and permanent within the timeframe specified by the program.

**AEmissions that a Federal agency has a continuing program responsibility for@** means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the Federal agency. Where an agency, in

performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a non-federal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

AFederal action@ means any activity engaged in by a department, agency, or instrumentality of the Federal government, or any activity that a department, agency or instrumentality of the Federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.). Where the Federal action is a permit, license, or other approval for some aspect of a non-federal undertaking, the relevant activity is the part, portion, or phase or the non-Federal undertaking that requires the Federal permit, license, or approval.

AFederal agency@ means, for purposes of this Part, a Federal department, agency, or instrumentality of the Federal government.

AIncrease the frequency or severity of any existing violation of any standard in any area@ means to cause a nonattainment area 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.

"Indirect emissions@ means those emissions of a criteria pollutant or its precursors that:

Are caused by the Federal action, but may occur later in time and/or may be farther removed in distance from the action itself but are still reasonably foreseeable; and

The Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency.

"Local air quality modeling analysis@ means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

"Maintenance area@ means an area with a maintenance plan approved under section 175A of the CAA.

"Maintenance plan@ means a revision to the applicable SIP, meeting the requirements of section 175A of the CAA.

"Metropolitan Planning Organization (MPO)" means that organization designated as being responsible, together with the State, for conducting the continuing,

cooperative, and comprehensive planning process under Section 134 of 23 U.S.C. 134 and Section 1607 of the Federal Transit Act (49 U.S.C. 1607).

"Milestone" has the meaning given in sections 82(g)(1) and 189(c)(1) of the CAA.

ANational ambient air quality standards (NAAQS)@ means those standards established pursuant to section 109 of the CAA and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO<sub>2</sub>), ozone, particulate matter (PM-10), and sulfur dioxide (SO<sub>2</sub>).

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

ANonattainment Area (NAA)@ means an area designated as nonattainment under section 107 of the CAA and described in 40 CFR 81, incorporated by reference in Section 255.160 of this Part.

APrecursors of a criteria pollutant" means:

For ozone, nitrogen oxides (NO<sub>x</sub>) unless an area is exempted from NO<sub>x</sub> requirements under section 182(f) of the CAA, and volatile organic compounds (VOC); and

For PM-10, those pollutants described in the PM-10 nonattainment area applicable SIP as significant contributors to the PM-10 levels.

AREasonably foreseeable emissions" means projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable, as described and documented by the Federal agency based on its own information and after reviewing any information presented to the Federal agency.

AREgional water and/or wastewater projects" means construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

AREgionally significant action@ means a Federal action for which the direct and indirect emissions of any pollutant represent 10 percent (.10) or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

ATotal of direct and indirect emissions@ means the sum of direct and indirect emissions increases and decreases caused by the Federal action; i.e., the "net" emissions, considering all direct and indirect emissions. The portion of emissions which are exempt or presumed to conform under subsections (a) through (g) of Section 255.170 are not included in the total of direct and indirect emissions. The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants.

**Section 255.150 Abbreviations**

CAA	Clean Air Act
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
EA	environmental assessment
EIS	environmental impact statement
FONSI	finding of no significant impact
IEPA	Illinois Environmental Protection Agency
km	kilometer
MPO	metropolitan planning organization
mi	mile
NAA	nonattainment area
NAAQS	National Ambient Air Quality Standard
NEPA	National Environmental Policy Act
NSR	New Source Review
PSD	Prevention Significant Deterioration
SIP	state implementation plan
USEPA	United States Environmental Protection Agency

**Section 255.160 Incorporations by Reference**

The following materials are incorporated by reference and do not contain any subsequent additions or amendments:

- a) Determining Conformity of General Federal Actions to State or Federal Implementation Plans, 40 CFR 51, Subpart W.
- b) National Primary and Secondary Ambient Air Quality Standards, 40 CFR 50 (1995).
- c) Designations of Areas for Air Quality Purposes, 40 CFR 81 (1995).
- d) Compilation of Air Pollutant Emission Factors (AP-42) the Technical Support Division of OAQPS, EPA, MD-14, Research Triangle Park, NC 27711.
- e) A Guidelines on Air Quality Models@ Part 51 - Requirements for Preparation, Adoption and Submittal of Implementation Plans, 40 CFR 51, Appendix W, 61 Fed. Reg. 41837 (August 12, 1996).

**Section 255.170 Activities Exempt from Conformity Analysis**

The requirements of this Part shall not apply to:

- a) Actions where the total of direct and indirect emissions are below the emissions levels specified in subsections (b)(1) and (b)(2) of Section 255.120.
- b) The following actions which would result in no emissions increase or an increase

in emissions that is clearly de minimis:

- 1) Judicial and legislative proceedings.
- 2) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.
- 3) Rulemaking and policy development and issuance.
- 4) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.
- 5) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel.
- 6) Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.
- 7) The routine, recurring transportation of material and personnel.
- 8) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and/or for repair or overhaul.
- 9) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.
- 10) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.
- 11) The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted.
- 12) Planning, studies, and provision of technical assistance.



- 13) Routine operation of facilities, mobile assets and equipment.
  - 14) Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.
  - 15) The designation of empowerment zones, enterprise communities, or viticultural areas.
  - 16) Actions by any of the Federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States.
  - 17) Actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank to effect monetary or exchange rate policy.
  - 18) Actions that implement a foreign affairs function of the United States.
  - 19) Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the Federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.
  - 20) Transfers of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity and assignments of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity for subsequent deeding to eligible applicants.
  - 21) Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.
- c) The following actions where the emissions are not reasonably foreseeable:
- 1) Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.
  - 2) Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.
- d) Actions which implement a decision to conduct or carry out a conforming program such as prescribed burning actions which are consistent with a

conforming land management plan.

- e) Notwithstanding the other requirements of this Part, a conformity determination is not required for the following Federal actions (or portion thereof):
  - 1) The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (section 173 of the CAA) or the prevention of significant deterioration (PSD) program (title I, part C of the CAA).
  - 2) Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of subsection (f) of this Section.
  - 3) Research, investigations, studies, demonstrations, or training (other than those exempted under subsection (b) of this Section), where no environmental detriment is incurred and/or where the particular action furthers air quality research.
  - 4) Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (e.g., hush houses for aircraft engines and scrubbers for air emissions).
  - 5) Direct emissions from remedial and removal actions carried out under CERCLA and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.
- f) Federal actions which are part of a continuing response to an emergency or disaster under subsection (e)(2) of this Section and which are to be taken more than six months after the commencement of the response to the emergency or disaster under subsection (e)(2) of this Section are exempt from the requirements of this Part only if:
  - 1) The Federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional six months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or
  - 2) For actions which are to be taken after those actions covered by subsection (f)(1) of this Section, the Federal agency makes a new determination as provided in subsection (f)(1) of this Section.
- g) Notwithstanding other requirements of this Part, actions specified by individual

Federal agencies that have met the criteria set forth in either subsection (h)(1)(A) or (B) of this Section and the procedures set forth in subsection (i) of this Section are presumed to conform, except as provided in subsection (j) of this Section.

- h) The Federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either subsection (1) or (2) of this Subsection(h):
  - 1) The Federal agency must clearly demonstrate using methods consistent with this Part that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:
    - A) Cause or contribute to any new violation of any standard in any area;
    - B) Interfere with provisions in the applicable SIP for maintenance of any standard;
    - C) Increase the frequency or severity of any existing violation of any standard in any area; or
    - D) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:
      - i) A demonstration of reasonable further progress;
      - ii) A demonstration of attainment; or
      - iii) A maintenance plan; or
  - 2) The Federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in Section 255.120(b)(1) and (2) of this Part, based, for example, on similar actions taken over recent years.
- i) In addition to meeting the criteria for establishing exemptions set forth in subsection (h)(1) or (h)(2) of this Section, the following procedures must also be complied with to presume that activities will conform:
  - 1) The Federal agency must identify through publication in the Federal Register its list of proposed activities that are presumed to conform and the basis for the presumptions;
  - 2) The Federal agency must notify USEPA Region V Office, IEPA, local air quality agencies and, where applicable, the agency designated under section 174 of the CAA and the MPO and provide at least 30 days for the

public to comment on the list of proposed activities presumed to conform;

- 3) The Federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and
  - 4) The Federal agency must publish the final list of such activities in the Federal Register.
- j) Notwithstanding the other requirements of this Part, when the total of direct and indirect emissions of any pollutant from a Federal action does not equal or exceed the rates specified in Sections 255.120 (b)(1) or (2) of this Part, but represents ten percent (.10) or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of Sections 255.110 and 255.190 through 255.240 of this Part shall apply for the Federal action.
- k) Where an action otherwise presumed to conform under subsection (g) of this Section is a regionally significant action or does not in fact meet one of the criteria in subsection (h)(1) of this Section, that action shall not be presumed to conform and the requirements of Sections 255.110 and 255.190 through 255.240 of this Part shall apply for the Federal action.
- l) The provisions of this Part shall apply in all nonattainment and maintenance areas.

### **Section 255.180      Conformity Analysis**

Any Federal department, agency, or instrumentality of the Federal government taking an action subject to the requirements of this Part must make its own conformity determination consistent with the requirements of this Part. In making its conformity determination, a Federal agency must consider comments from any interested parties. Where multiple Federal agencies have jurisdiction for various aspects of a project, a Federal agency may choose to adopt the analysis of another Federal agency or develop its own analysis in order to make its conformity determination.

### **Section 255.190      Reporting Requirements**

- a) A Federal agency making a conformity determination under Section 255.220 of this Part must provide to appropriate USEPA Region V Office, IEPA, local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the CAA, and the MPO a 30 day notice which describes the proposed action and the Federal agency's draft conformity determination on the action.
- b) A Federal agency must notify USEPA Region V Office, IEPA, local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the CAA and the MPO within 30 days after making a final conformity determination under Section 255.220 of this Part.

**Section 255.200 Public Participation**

- a) Upon request by any person regarding a specific Federal action, a Federal agency must make available for review its draft conformity determination under Section 255.220 of this Part with supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.
- b) A Federal agency must make public its draft conformity determination under Section 255.220 of this Part by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.
- c) A Federal agency must document its response to all the comments received on its draft conformity determination under Section 255.220 of this Part, and make the comments and responses available, upon request by any person regarding a specific Federal action, within 30 days after the final conformity determination.
- d) A Federal agency must make public its final conformity determination under Section 255.220 of this Part for a Federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days after the final conformity determination.

**Section 255.210 Frequency of Conformity Determinations**

- a) The conformity status of a Federal action shall lapse 5 years from the date a final conformity determination is reported under Section 255.190 of this Part, unless the Federal action has been completed or a continuous program has been commenced to implement that Federal action within a reasonable time.
- b) Ongoing Federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as such activities are within the scope of the final conformity determination reported under Section 255.190 of this Part.
- c) If, after the conformity determination is made, the Federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in Section 255.120(b)(1) and (2) of this Part, a new conformity determination is required.

**Section 255.220 Criteria for Determining Conformity of General Federal Actions**

- a) An action required under Section 255.120(b)(1) and (2) of this Part to have a conformity determination for a specific pollutant will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in Section 255.120(b)(1) and (2) of this Part, or otherwise requires a conformity

determination due to the total of direct and indirect emissions from the action, the action meets the requirements of subsection (c) of this Section, and meets any of the following requirements:

- 1) For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration;
- 2) For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a similarly enforceable measure that effects emission reductions so that there is no net increase in emissions of that pollutant;
- 3) For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meets the requirements specified in:
  - A) Subsection (b) of this Section, based on areawide air quality modeling analysis and local air quality modeling analysis; or
  - B) Subsection (a)(5) of this Section and, for local air quality modeling analysis, the requirement of subsection (b) of this Section;
- 4) For CO or PM-10:
  - A) Where the IEPA advises that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meets the requirements specified in subsection (b) of this Section, based on local air quality modeling analysis; or
  - B) Where the IEPA advises that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meets the requirements specified in subsection (b) of this Section, based on areawide modeling, or meets the requirements of subsection (a)(5) of this Section; or
- 5) For ozone or nitrogen dioxide, and for purposes of subsections (a)(3)(B) and (a)(4)(B) of this Section, each portion of the action or the action as a whole meets any of the following requirements:
  - A) Where USEPA has approved a revision to an area's attainment or maintenance demonstration after 1990 and IEPA makes a determination as provided in subsection (a)(5)(A)(i) of this Section or where the State makes a commitment as provided in subsection (a)(5)(A)(ii) of this Section:
    - i) The total of direct and indirect emissions from the action

(or portion thereof) is determined and documented by IEPA to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable SIP;

- ii) The total of direct and indirect emissions from the action (or portion thereof) is determined by IEPA to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable SIP and the Director of IEPA makes a written commitment to USEPA which includes the following:

a schedule for adoption and submittal of a revision to the SIP which would achieve the needed emission reductions prior to the time emissions from the Federal action would occur;

identification of measures for incorporation into the SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

a demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the Federal action, and that local authority to implement additional requirements has been fully pursued;

a determination that the responsible Federal agencies have required all reasonable mitigation measures associated with their action; and

written documentation including all air quality analyses supporting the conformity determination;

- B) The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP;
- C) The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable SIP or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

- D) Where USEPA has not approved a revision to the relevant SIP attainment or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years (described in Section 255.230 of this Part) do not increase emissions with respect to the baseline emissions:
- i) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed Federal action during:
- calendar year 1990;
- the calendar year that is the basis for the classification (or, where the classification is based on multiple years, the most representative year), if a classification is promulgated in 40 CFR part 81, incorporated by reference in Section 255.160 of this Part; or
- the year of the baseline inventory in the PM-10 applicable SIP;
- ii) The baseline emissions are the total of direct and indirect emissions calculated for the future years (described in Section 255.230(d) of this Part using the historic activity levels (described in subsection (a)(5)(D)(i) of this Section) and appropriate emission factors for the future years; or
- E) Where the action involves regional water and/or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable SIP.
- b) The areawide and/or local air quality modeling analyses must:
- 1) Meet the requirements in Section 255.230 of this Part; and
- 2) Show that the action does not:
- A) Cause or contribute to any new violation of any standard in any area; or
- B) Increase the frequency or severity of any existing violation of any standard in any area.
- c) Notwithstanding any other requirements of this Section, an action subject to this Part may not be determined to conform to the applicable SIP unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice



requirements.

- d) Any analyses required under this Section must be completed, and any mitigation requirements necessary for a finding of conformity must be identified, before the determination of conformity is made.

**Section 255.230      Procedures for Conformity Determinations of General Federal Actions**

- a) The analyses required under this Part must be based on the latest planning assumptions.
  - 1) All planning assumptions must be derived from the estimates of population, employment, travel, and congestion most recently approved by the MPO, regional planning commission or other agency authorized to make such estimates, where available.
  - 2) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, shall be developed in consultation with the regional planning commission, MPO or other agency authorized to make such estimates for the urban area.
- b) The analyses required under this Part must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the USEPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program. Any modification and substitution shall be done in consultation with IEPA and USEPA.
  - 1) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by USEPA and available for use in the preparation or revision of SIPs in this State must be used for the conformity analysis as specified in subsections (b)(1)(A) and (B) of this Section:
    - A) The USEPA must publish in the Federal Register a notice of availability of any new motor vehicle emissions model; and
    - B) A grace period of 3 months shall apply during which the motor vehicle emissions model previously specified by USEPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than 3 years before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model specified by USEPA.
  - 2) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP-42)" as incorporated by reference in Section 255.160 of this Part must be used for the conformity analysis unless more accurate emission

data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

- c) Any air quality modeling analyses necessary to demonstrate conformity shall be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models@ Part 51 - Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR 51, Appendix W, 61 Fed. Reg. 41837 (August 12, 1996) incorporated by reference in Section 255.160 of this Part, unless:
  - 1) The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program; and
  - 2) Any modification of substitution shall be done in consultation with USEPA.
- d) The analyses required under this Part, except Section 255.220(a)(1) of this Part, must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:
  - 1) The CAA mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;
  - 2) The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and
  - 3) Any year for which the applicable SIP specifies an emissions budget.

#### **Section 255.240 Mitigation of Air Quality Impacts**

- a) Any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described, including an implementation schedule containing explicit time lines for implementation. Such measures shall become an integral component of the Federal action being determined to conform. Failure to implement committed mitigation measures will jeopardize the conformity determination and expose the Federal agency to enforcement provisions of the CAA.
- b) Prior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to assure the implementation of any mitigation measures which are identified as conditions for making conformity determinations.
- c) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.
- d) In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the Federal agency must be conditioned on binding the entity to implement the mitigation measures set forth in the

conformity determination.

- e) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of Section 255.190 of this Part and the public participation requirements of Section 255.200 of this Part.