

Program. This notice announces the date, time, location, and procedures for the public meetings.

**DATES:** The public meetings will be held on March 7 and 9, 2000, starting at 10:30 a.m. each day. Written comments are invited and must be received on or before February 29, 2000.

**ADDRESSES:** The public meeting will be held JAA Headquarters, Saturnusstraat 8-10, 2132 HB Hoofddorp. Persons unable to attend the meeting may mail their comments in triplicate to: Brenda Courtney, Federal Aviation Administration, Office of Rulemaking, ARM-200, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Requests to attend and present a statement at the meeting or questions regarding the logistics of the meeting should be directed to Brenda Courtney, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3327, telefax (202) 267-5075.

**SUPPLEMENTARY INFORMATION:** The Federal Aviation Administration and the Joint Aviation Authorities will convene meetings to accept input from the public on the Harmonization Work Program. The meetings will be held on March 7 and 9, 2000, at JAA Headquarters, Saturnusstraat 8-10, 2132 HB Hoofddorp. The meetings are scheduled to begin at 10:30 a.m. each day. The agenda for the meetings will include:

March 7, 2000

Review of Action Items from October 1999 HMT Meeting  
Review of Action Items from the FAA/JAA 16th Annual Conference General Session—Industry Issues and Concerns

March 9, 2000

General Session—Response to Industry Issues and Concerns

### Meeting Procedures

The following procedures are established to facilitate the meetings:

(1) There will be no admission fee or other charges to attend or to participate in the meeting. The meetings will be open to all persons who have requested in advance to present statements or who register on the day of the meeting subject to availability of space in the meeting room.

(2) There will be morning and afternoon breaks and lunch breaks.

(3) The meetings may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled.

(4) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, may be limited to a 10-minute

statement. If possible, we will notify the speaker if additional time is available.

(5) The FAA and JAA will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, speakers may be excluded if necessary to present a balance of viewpoints and issues.

(6) Representatives of the FAA and JAA will preside over the meetings.

(7) The FAA and JAA will review and consider all material presented by participants at the meetings. Position papers or material presenting views or information related to proposed harmonization initiatives may be accepted at the discretion of the FAA and JAA presiding officers. Persons participating in the meetings should provide five (5) copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participants.

(8) Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the panel is not intended to be, and should not be construed as, a position of the FAA or JAA.

(9) The meetings are designed to solicit public views and more complete information on proposed harmonization initiatives. Therefore, the meetings will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, panel members may ask questions to clarify a statement and to ensure a complete and accurate record.

Issued in Washington, DC, on February 16, 2000.

**Brenda D. Courtney,**

*Manager, Aircraft and Airport Rules Division.*

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**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Federal Transit Administration

[FHWA Docket No. FHWA-99-4317]

### Transportation Equity Act for the 21st Century; Final Guidance for the Congestion Mitigation and Air Quality Improvement Program

**AGENCIES:** Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

**ACTION:** Notice; issuance of final guidance.

**SUMMARY:** This document publishes final guidance on section 1110 of the Transportation Equity Act for the 21st Century (TEA-21) for the congestion mitigation and air quality improvement program (CMAQ). This final guidance replaces all earlier CMAQ guidance documents and provides information on: (1) CMAQ authorization levels and apportionment factors; (2) the new flexibility and transferability provisions; (3) geographic area eligibility for CMAQ funds and the impacts of new National Ambient Air Quality Standards on eligibility; (4) project eligibility; (5) analytical requirements; and (6) Federal, State, and local agency roles and responsibilities in the administration of the program.

**DATES:** This final guidance is effective on April 28, 1999.

**FOR FURTHER INFORMATION CONTACT:** For the FHWA program office: Mr. Michael J. Savonis, HEPN-10, Office of Environment and Planning, (202) 366-2080; For the FTA program office: Mr. Abbe Marner, TPL-12, Office of Planning, (202) 366-4317; For legal issues (FHWA): Mr. S. Reid Alsop, HCC-30, Office of the Chief Counsel, (202) 366-1371. For legal issues (FTA): Mr. Scott Biehl, TCC-30, Assistant Chief Counsel, Environment and Regional Operations Division, (202) 366-0952. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

### SUPPLEMENTARY INFORMATION:

#### Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the **Federal Register's** home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>. Internet users may also access the written comments on the interim guidance [FHWA Docket No. FHWA-98-4317] received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours a day, 365 days each year. Please follow the instructions online for more information and help.

#### Background

On October 26, 1998, at 63 FR 57154, the FHWA and the FTA published interim implementation guidance for

the CMAQ program provided in section 1110 of the TEA-21, Public Law 105-178, 112 Stat. 107, at 142 (1998). The text of the final guidance, which has been in effect since April 28, 1999, is provided as an attachment to this notice.

In the latter part of 1998, the FHWA and the FTA hosted five forums in four cities (Washington, D.C., San Francisco, CA, Chicago, IL, and St. Louis, MO) to provide an opportunity for those directly involved in congestion mitigation and air quality improvement programs to assist in developing the final guidance.

The CMAQ program, established under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, 105 Stat. 1914, was designed to assist nonattainment and maintenance areas in attaining the national ambient air quality standards (NAAQS) by funding transportation projects and programs that will improve air quality. It was reauthorized with some changes under section 1110 of the TEA-21.

The primary purpose of the CMAQ program remains the same: to fund projects and programs in air quality nonattainment and maintenance areas that reduce transportation-related emissions. It is the only program under title 23, U.S.C., with funds dedicated to helping nonattainment and maintenance areas to achieve and maintain the NAAQS.

#### Discussion of Comments

Interested persons were invited to comment on the interim guidance for the CMAQ program under the TEA-21. We received 34 comments from 32 agencies in response to an invitation to submit written comments to the docket number FHWA-1998-4317 by November 30, 1998. Of the 32 commenters, 14 were State agencies, 7 were local agencies, 7 were private sector companies or industry associations, 2 were public interest institutes, 1 was a Federal agency, and 1 was a private citizen. The **Federal Register** notice specifically asked for general comments, as well as for input on eight questions and issues related to the new flexibilities in the CMAQ program (For brevity, the original questions are abridged in this summary). The FHWA and the FTA also conducted extensive outreach efforts by holding five stakeholder forums in which over 200 participants provided input.

In general, the comments were supportive of the CMAQ program, acknowledging its important role in helping States and metropolitan areas

reach air quality goals. Given the several years of experience with CMAQ and public involvement processes under ISTEA, as well as the continued need to provide flexibility to States and metropolitan planning organizations (MPOs), most commenters, particularly those at the stakeholder forums, urged that CMAQ implementation guidance be flexible—not prescriptive—and allow for existing processes to work or be enhanced appropriately.

Many of the written comments to the docket on the interim guidance addressed two issues: (1) Eligibility of CMAQ funding in areas where the 1-hour ozone standard has been revoked; and (2) project evaluation and project selection criteria.

Many of the State agencies commenting to the docket opposed eliminating the eligibility of CMAQ funding for the areas where the 1-hour ozone standard has been revoked. The law makes clear, however, that only those areas that are classified in accordance with sections 181(a) and 186(a) or (b) of the Clean Air Act (42 U.S.C. 7511 and 7512) can be included in the statutory formula apportioning CMAQ funds. Further, the law requires that CMAQ funds be expended to assist nonattainment and maintenance areas, if any exist within the State, to attain and maintain the standards. Since nonattainment areas that have the 1-hour standard revoked have no ozone standard to meet and, as a result, have no maintenance plans and continuing air quality responsibilities, the CMAQ funds could not be expended to assist attainment or maintenance of the 1-hour standard in those areas. Finally, reinstatement of the 1-hour ozone standard, as proposed by the U.S. Environmental Protection Agency (EPA), would render this issue moot.

In the final guidance, the FHWA and the FTA have attempted to provide as much flexibility to State and local agencies in using CMAQ funding within the existing authority provided by the TEA-21. As reflected in the final guidance, in order to provide continuity in the transportation and air quality planning process, the FHWA and the FTA will allow those areas where the 1-hour ozone standard has been revoked to use CMAQ funds for air quality improvement projects that were included in the first three years of the transportation improvement program (TIP) in effect when the standard was revoked. In addition, these areas were granted a four-month period (beginning with the April 28, 1999 guidance or the effective date of revocation, whichever is later) to make any adjustments to those TIPs.

Nearly all of the written comments emphasized the need for project evaluation and selection criteria that could quantify air quality benefits more accurately and encourage the selection of the most cost-effective projects. Many commenters also felt that such evaluation protocols would help ensure that public-private partnerships serve the public interest. The FHWA and the FTA recognize the importance of ensuring that CMAQ funds continue to provide an important resource for reducing air pollution from mobile sources, and, in particular, to assist attainment of the national ambient air quality standards. The law, however, does not require performance standards. In addition, the CMAQ program funds a great variety of projects, each with unique circumstances and potential impacts (including air quality improvement, congestion relief, quality of life enhancements, and other public benefits), that preclude the application of a standardized and inflexible evaluation protocol. The FHWA and the FTA have encouraged States to prudently use their CMAQ funds for those projects that have strong emissions and other public benefits. The FHWA and the FTA believe that information on evaluation and project selection criteria and effective practices is best provided in follow-up technical assistance rather than prescribed in the final guidance document.

#### Question 1. Public-Private Partnerships

(a) Are there ways to ensure that the public funding (CMAQ) is limited to the production of a public benefit—air quality improvement?

Thirty commenters responded to the four questions concerning public-private partnerships. Collectively, the comments identified several methods to ensure that CMAQ funding used in public-private partnerships serve the public interest. For the most part, commenters cited the need for performance measures (such as cost-effectiveness criteria) and a standard methodology for measuring and reporting air quality improvement and public benefits. Some commenters suggested that programs administered by the U.S. Department of Energy, the California Air Resources Board, and the Connecticut Department of Transportation could serve as models on how to administer public-private partnerships.

Like the great majority of commenters, the FHWA and the FTA strongly believe that public-private partnerships provide a significant opportunity to advance a greater number of clean air transportation initiatives than could be

achieved with public funds alone. The final guidance addresses public-private partnerships as an eligible activity. The TEA-21 requires that a written agreement be in place between the public agency and private or non-profit entity before implementing a CMAQ-funded project. Since the public benefit is air quality improvement, it is expected that future funding proposals involving private entities will demonstrate strong emission reduction benefits. In this respect, public-private partnerships are no different from public sector CMAQ projects. In addition, the FHWA is currently researching effective models and practices for public-private partnerships that will be shared in future technical assistance.

(b) How can the Federal, State, and local agencies insure that an open process for project selection is preserved?

For the most part, all of the commenters agreed that an open process was important and essential. Many commenters identified possible elements of an open process, which included the following: (1) Asking MPOs to provide public notice of the availability of funding for CMAQ programs; (2) providing opportunities for prospective participants to meet with transportation planning officials to discuss the merits of their projects; and (3) having Federal, State, and local agencies identify the various steps the private sector must take to participate in public-private partnership programs. The FHWA and the FTA agree with the majority of commenters that it is essential that all interested parties have full and timely access to the process of selecting projects for CMAQ funding. Given the great interest from commenters and the diversity of ideas, the FHWA and the FTA expect to provide additional information on effective practices and procedures on cost-effectiveness and project selection in future technical assistance.

(c) What safeguards, agreements, or other mechanisms should be employed to protect the public investment and insure that joint public-private projects funded under the CMAQ program are used for their intended public purpose, which is to improve air quality?

In general, commenters believed that existing processes protect the public interest and offer adequate safeguards to public agencies. Three commenters cited U.S. Department of Energy and California Air Resources Board programs as possible models for effective administration of public-private partnerships. Collectively, the commenters identified several

mechanisms to safeguard the public interest in public-private partnerships that receive CMAQ funds as follows: (1) Establish a regular monitoring program that measures air quality improvements and other public benefits; (2) retain an appropriate percentage of the CMAQ funding until the State is satisfied that a project is meeting its intended purpose; (3) require MPOs to certify that the project will improve air quality using appropriate evaluation procedures; and (4) appoint a project manager from another agency as an administrator. The FHWA and the FTA will consider these comments in future technical assistance concerning public-private partnerships related to CMAQ-funded projects. As reflected in the final guidance, the States are responsible for ensuring that the intent of CMAQ funded projects is served.

(d) What are the implications of these new flexibilities on the transportation/air quality planning process? For transportation conformity?

Several State agencies emphasized that documentation of estimated emission reduction is the key for conformity analysis, regardless of project sponsor, while an open planning process and emphasis on carrying out the State Implementation Plan (SIP) will assist conformity. However, one State agency felt the new public-private partnership provisions would have a minimal impact on the transportation and air quality planning and conformity process. Based on these comments and input from other stakeholders at public forums, the FHWA and the FTA expect that, through the continued vigilance and responsibilities of the States, public-private partnerships will not negatively impact the ability of areas to achieve air quality and conformity goals. The final guidance also stresses the use of CMAQ funds for projects that have strong emissions benefits.

#### *Question 2. Telecommuting*

Currently, eligibility for expenses related to telecommuting programs is limited to planning, technical and feasibility studies, training, coordination and promotion. Purchase of computer and office equipment for public agencies and related activities are not eligible. Should CMAQ eligibility be expanded to include these costs?

Of the 14 responses to this question, 6 commenters felt that telecommuting eligibility should not be extended to the purchase of computer and office equipment. These commenters either believed that funding for these items could come from other sources, or that telecommuting projects had a minimal impact on air quality improvements.

One commenter expressed concerns that telecommuting programs may actually exacerbate sprawl by encouraging employees to live farther from their workplaces. Another 8 commenters believed that telecommuting programs should be able to purchase equipment with CMAQ funds with some caveats as follows: (1) Purchase of computer and office equipment should be eligible as a one-time expenditure; (2) equipment purchases for home use or for only one employee should not be eligible; (3) equipment must remain for use by the telecommuting program; and (4) the telecommuting program must be large enough to have an actual, quantifiable impact upon air conformity. One commenter suggested that agencies should fund pilot projects to develop empirical data on the benefits of telecommuting programs. Based on the conflicting comments received, the FHWA and the FTA felt there was no compelling reason to change the existing eligibility policy on telecommuting.

#### *Question 3. Alternative Fuel Vehicles (AFV)*

Under the interim guidance and under TEA-21, CMAQ eligibility under the public-private partnership provisions is limited to the incremental cost of a new alternative fuel vehicle as compared to a conventionally fueled vehicle of the same type. Should this policy be extended to projects that will provide for the use of alternative fuels for publicly-owned vehicles and vehicle fleets (other than vehicles used for public transit services)?

There were 20 responses to this question. Three commenters felt that the policy should be extended to projects that encourage the use of alternative fuels for publicly-owned vehicles and vehicle fleets. Another 8 commenters stated that the policy should not be extended to such publicly-owned projects. Many of these commenters believed that the FHWA and the FTA should maintain as much flexibility as possible so that areas can realize the potential air quality improvements offered by AFVs, particularly those that exceed EPA standards. Of the other 9 responses, 8 commenters expressed general support for the eligibility of alternative fuel vehicle projects for CMAQ funds, while 1 commenter stated that the FHWA and FTA should not intervene in the AFV market.

Based on the positive response from the majority of commenters to the **Federal Register** notice and in public forums, the final guidance maintains current eligibility for the full cost of publicly-owned, alternative fuel

vehicles, for on-site fueling facilities, and for other infrastructure needed to fuel alternative fuel vehicles. However, if privately-owned fueling stations are in place and are reasonably accessible and convenient, then CMAQ funds may not be used to construct or operate publicly-owned fueling stations as before. The FHWA and the FTA emphasize that there must continue to be a sound and open process, which safeguards the public interest, and which does not favor one private sector interest over another. In particular, States continue to be responsible for ensuring that the public interest is protected.

#### *Question 4. Traffic Calming Measures*

Should traffic calming projects be categorically excluded from CMAQ funding or should they be considered for eligibility on a case-by-case basis?

Of the 13 commenters, 9 agencies felt that traffic calming projects should be considered for CMAQ funding on a case-by-case basis by carefully evaluating possible increases in hydrocarbon and carbon monoxide (CO) emissions at lower speeds against potential long-term reductions in automobile travel by single occupancy vehicles. One of these agencies also stipulates that traffic calming projects should be part of a broader area systems plan in order to receive CMAQ funds.

Two agencies believed that traffic calming projects should not be eligible, while another two believed that the FHWA and the FTA should sponsor further research investigating the long-term potential of mode switching and traffic diversion resulting from traffic calming projects. Based on the comments received, the FHWA and the FTA will continue to consider traffic calming measures for CMAQ funding on a case-by-case basis.

#### *Question 5. Experimental Pilot Projects*

What can the FHWA and the FTA do to encourage the implementation of experimental projects under this provision?

Twelve agencies responded to this question, offering several ideas to the FHWA and the FTA on possible actions to encourage experimental pilot projects as follows: (1) Provide direction and examples as to how areas could best determine priority ranking of experimental CMAQ projects compared to other proposed projects that have quantified emissions benefits; (2) develop a working group or pursue research regarding the development of unique CMAQ pilot projects; (3) consider a process by which a pilot project that demonstrates quantifiable

air quality benefits can be incorporated into "regular" CMAQ programs; (4) create an objective rating system for candidate projects that establishes a bonus for innovative projects that don't have significant access to other TEA-21 funding; and (5) direct States to set aside a minimum percentage of CMAQ appropriations for experimental projects, the allocation of which would be determined jointly by the individual States' air quality, energy, and transportation agencies. Given the diversity of comments received, the FHWA and the FTA will consider the wide-ranging suggestions in future research and program activities.

#### *Question 6. Fare/Fee Subsidy Program*

The current CMAQ Guidance allows for partial, short-term subsidies of transit and paratransit fares as a means of encouraging transit use. Transit agencies have used this provision to offer reduced fares on "ozone alert" days. Should this provision be changed to allow "free fares?" Should the provision be loosened to allow a broader period of coverage, i.e., throughout the high-ozone season rather than individual episodes?

Of the 13 agencies responding to this question, 10 believed that the provisions should allow free fares and a broader period of coverage. These ten agencies believed that such an expansion would provide greater local flexibility in planning, and enable more routine use of transit. In particular, these agencies believed that allowing a broader period of coverage would enable better planning, and eliminate the difficulty of predicting "high ozone" days far enough in advance to have an impact on travel choice. Two agencies believed that the FHWA and the FTA should assess subsidy programs for cost-effectiveness before expanding program eligibility. In addition, one State agency opposed relaxing the provisions, stating that free fares and broader coverage would only enable existing transit users to make more substantial use of the transit system rather than attract new transit users.

The final guidance allows for the use of CMAQ funds to subsidize a transit fare if the reduced or free fare is part of a more comprehensive program in the nonattainment or maintenance area to prevent exceedances of a national air quality standard. In the final guidance, the FHWA and the FTA focus on the potential to attract new riders to transit so that transit can contribute to an action plan to meet air quality objectives.

#### *Question 7. High Occupancy Toll (HOT) Lanes*

Should projects to fund the development and/or operation of HOT lanes be eligible under the CMAQ program?

Of the 11 commenters on this question, 5 believed that HOT lanes should be eligible. Many of these commenters believed that the revenues from these projects should be reinvested for air quality improvements. A public interest group for highway and safety qualified their affirmative response by stating that medium or heavy trucks should be excluded from participating in a congestion pricing program on HOT lanes receiving CMAQ funds. Two agencies commented that HOT lanes should not be eligible since they have mixed air quality improvement results and could be self-funding. Another four agencies believed that HOT lanes must demonstrate air quality benefits before becoming eligible. There is no clear consensus among the commenters. Further concerns exist regarding the FHWA's and the FTA's discretion to allow CMAQ funding for HOT lanes and no commenters suggested an alternative interpretation of the law that might preclude these concerns. In the final guidance, the FHWA and the FTA state that projects to plan, develop, assess, or construct new High Occupancy Toll lanes are an eligible CMAQ expense only if they are part of the Value Pricing Program under TEA-21 (which provides relief under the law from some statutory provisions like those in 23 U.S.C. 149.)

#### *Question 8. Reporting Requirements*

Do you have any suggestions on how to improve upon the quality of data and information provided in annual reports? Would you use an electronic reporting format if that option were available to you? Do you have any suggestions on how to improve the reporting requirements and minimize the administrative burden of reporting on CMAQ-funded projects?

Of the 10 agencies responding to these questions, all welcomed electronic reporting, particularly a system that could take advantage of internet technologies. These commenters believed that electronic reporting would facilitate communication, help streamline the reporting process, and reduce the administrative burden. Based on the positive comments and endorsement received, the FHWA is developing a web-based electronic reporting system that can be used by Federal, State, and MPO agencies, and also make information about CMAQ projects more accessible to the public.

**Authority:** 23 U.S.C. 315; sec. 1110, Pub. L. 105-178, 112 Stat. 107 (1998); 49 CFR 1.48 and 1.51.

Issued on: February 14, 2000.

**Nuria Fernandez,**

*Acting Federal Transit Administrator.*

**Kenneth R. Wykle,**

*Federal Highway Administrator.*

The text of the final implementation guidance on the CMAQ program reads as follows:

**The Congestion Mitigation and Air Quality Improvement (CMAQ) Program: Program Guidance**

*I. Introduction*

The CMAQ program was reauthorized in the recently enacted TEA-21 (Public Law 105-178, June 9, 1998). The primary purpose of the CMAQ program remains the same: to fund transportation projects and programs in nonattainment and maintenance areas which reduce transportation-related emissions. Over \$8.1 billion dollars is authorized over the 6-year program (1998-2003), with annual authorization amounts increasing each year during this period.

This guidance provides complete information on the CMAQ program including:

1. Authorization levels and apportionment factors under TEA-21;
2. Flexibility and transferability provisions available to States;
3. Geographic area eligibility for CMAQ funds;
4. Project eligibility information;
5. Project selection processes; and
6. Program oversight and reporting responsibilities.

This guidance replaces all earlier CMAQ guidance documents. Information on the current annual apportionment to each State and copies of this guidance are available from the FHWA Web Site at: [www.fhwa.dot.gov](http://www.fhwa.dot.gov).

*II. Program Purpose*

The purpose of the CMAQ program is to fund transportation projects or programs that will contribute to attainment or maintenance of the national ambient air quality standards (NAAQS) for ozone and carbon monoxide (CO). The TEA-21 also allows CMAQ funding to be expended in particulate matter (PM) nonattainment and maintenance areas.

Congress did not intend CMAQ funding to be the only source of funds to reduce congestion and improve air quality. Other funds under the Surface Transportation Program (STP) or the Federal Transit Administration (FTA) capital assistance programs, for example, may be used for this purpose as well. Furthermore, the greatest air

quality benefit will accrue not solely from Federal funds, but from a partnership of Federal, State and local efforts.

*III. Priority for Use of CMAQ Funds*

Section 176(c) of the Clean Air Act (CAA, 42 U.S.C. 7506, July 14, 1955, c. 360, Title I, Section 176(c)(2)(B) as amended Nov. 15, 1990) requires that the Federal Highway Administration (FHWA) and the FTA ensure timely implementation of transportation control measures (TCMs) in applicable State Implementation Plans (SIPs), and consequently, the highest priority for funding under the CMAQ program is for the implementation of such measures. The SIPs and the control measures they contain are necessary to assist a State to attain and maintain the NAAQS. A basic criterion for making conformity determinations is the timely implementation of TCMs in the SIP, and conformity determinations are necessary before transportation plans, programs, or projects can be adopted and approved. If States fail to ensure timely implementation of TCMs included in SIPs, their conformity determinations and transportation initiatives will be in jeopardy. In addition, failing to implement TCMs in SIPs can also trigger the application by the Environmental Protection Agency (EPA) of the CAA highway sanctions (42 U.S.C. § 7509, July 14, 1955, c. 360, Title I, Section 179(b)(1), as amended Nov. 15, 1990).

Once CMAQ projects and programs are identified, States need to insure that sufficient obligation authority is reserved to implement these projects and programs so that nonattainment areas make progress toward attainment of the NAAQS and that maintenance areas do not backslide into nonattainment. While the continuation of CMAQ funds into the maintenance period now makes it possible to look at longer term strategies, States and metropolitan planning organizations (MPOs) are still encouraged to consider and give priority to strategies that would help them meet their attainment deadlines and maintain the NAAQS into the future.

States and MPOs should make strategic use of the CMAQ funds allotted to them even if they will not be used for TCMs in their SIPs. For example, CMAQ funding should also be considered for use in implementing other CMAQ eligible transportation projects in SIPs such as inspection and maintenance (I/M) programs. These and other transportation projects may be essential to attainment of the NAAQS and therefore States and MPOs are urged to

consider their funding, where eligible, under the CMAQ program.

The FHWA and FTA continue to recommend that States and MPOs develop their transportation/air quality programs using complementary measures that simultaneously provide alternatives to single-occupant vehicle (SOV) travel while reducing demand through pricing, parking management, regulatory or other means. Further, the FHWA and FTA urge States and MPOs to develop a full and open public process for the solicitation and selection of meritorious projects to be funded through the CMAQ program.

*IV. Authorization Levels Under TEA-21*

*Authorization Levels*

Table 1 shows the TEA-21 CMAQ authorization levels by fiscal year. The CMAQ funds will be apportioned to States each year based upon the adopted apportionment factors as shown in Table 2.

TABLE 1.—TEA-21 CMAQ AUTHORIZATION LEVELS

Fiscal year authorization	Amount authorized
FY1998 .....	\$1,192,619,000
FY1999 .....	1,345,415,000
FY2000 .....	1,358,138,000
FY2001 .....	1,384,930,000
FY2002 .....	1,407,474,000
FY2003 .....	1,433,996,000

*Minimum Guarantee*

The TEA-21 includes a minimum guarantee that provides each State funding in an amount not less than 90.5 percent of the estimated annual Federal gasoline tax payments each State pays into the Highway Trust Fund (HTF). Due to the Minimum Guarantee, the annual authorizations listed in Table 1 are the minimum authorization levels and are likely to be increased depending on actual HTF receipts.

*Transferability of CMAQ Funds*

States may transfer CMAQ funds to other programs according to the following provision (23 U.S.C. 110(c)). An amount not to exceed 50 percent of the State's annual apportionment may be transferred less the amount the State would have received if the CMAQ program was authorized at \$1,350,000,000 for that year. Any transfer of such funds must still be obligated in nonattainment and maintenance areas. This increment of transferable funds will differ from year-to-year and State-to-State depending on overall authorization levels. Each year FHWA will inform each State how

much of their CMAQ funding is transferable, if any, and will track the transfer of CMAQ funds each year.

*V. Annual Apportionments of CMAQ Funds to States*

Apportionment Factors

The CMAQ funds are apportioned annually according to factors (23 U.S.C.

§ 104(a)), largely based on air quality need, which are calculated in the following manner. The population of each area in a State (based upon Census bureau data by county), that at the time of apportionment is a nonattainment or maintenance area for ozone and/or CO and meets the classifications contained in the CAA, is multiplied by the

appropriate factor listed in Table 2. Two key changes are included in the apportionment factors under TEA-21. Areas that are designated and classified as submarginal and maintenance areas for ozone are now explicitly included in the apportionment formula, and there are new weighting factors for CO nonattainment areas.

TABLE 2.—TEA-21 CMAQ APPORTIONMENT FACTORS

Pollutant	Classification at the Time of annual Apportionment	Weighting factor
Ozone (O <sub>3</sub> ) or (CO)	Maintenance (these areas had to be previously eligible as nonattainment areas—See Section VI).	.8
Ozone	Submarginal	.8
	Marginal	1.0
	Moderate	1.1
	Serious	1.2
	Severe	1.3
	Extreme	1.4
CO	Nonattainment (for CO only)	1.0
Ozone and CO	Ozone nonattainment or maintenance and CO maintenance	1.1×O <sub>3</sub> factor
	Ozone nonattainment or maintenance and CO nonattainment.	1.2×O <sub>3</sub> factor
All States—minimum apportionment	½ of 1 percent total annual apportionment of CMAQ funds	N/A

Minimum Apportionments

Each State is guaranteed at least ½ of 1 percent of each year’s CMAQ authorized funding regardless of whether the State has any nonattainment or maintenance areas.

Use of Minimum Apportionments in States Without Nonattainment or Maintenance Areas

If a State does not have, and has never had, a nonattainment or maintenance area, the State may use its minimum apportionment for any projects in the State eligible under either the CMAQ or the STP. Such States are encouraged to give priority to the use of CMAQ program funds for projects that will relieve congestion or improve air quality in areas that are at risk of being designated as nonattainment.

Use of Minimum Apportionments in States With Nonattainment or Maintenance Areas

Some of the States receiving minimum apportionments have nonattainment or maintenance areas. In States where the amount of CMAQ funds generated due to nonattainment or maintenance areas is less than the minimum apportionment levels, additional flexibility is granted under TEA-21. A State receiving the minimum apportionment must use that portion of funds related to nonattainment and maintenance status (the “air quality” portion), in those nonattainment or maintenance areas. The State may use the funds added above the formula

amount to make up the minimum apportionment (the “flexible portion”) for any CMAQ or STP eligible project in the State.

When the total annual CMAQ authorization exceeds \$1.35 billion, States may also use the transferability provisions as described in Section IV. After the apportionment process each year, the FHWA will advise the minimum apportionment States with nonattainment or maintenance areas of the amount that can be flexed and the amount that can be transferred, if any.

Apportionments and State Suballocation

Despite the statutory formula for determining the apportionment amount, the State can use its CMAQ funds in any ozone, CO or PM-10 nonattainment or maintenance area. A State is under no statutory obligation to suballocate CMAQ funds in the same way as they were apportioned. However, States are strongly encouraged to consult with affected MPOs to determine CMAQ priorities and allocate funds accordingly. Further, to facilitate planning and programming of funds, it is critical that States provide MPOs with timely and reasonable estimates of the amount of CMAQ funding they can expect each year.

Federal Share and State/Local Match Requirements

The Federal share for most eligible activities and projects is 80 percent or 90 percent if used on the interstate system. Under certain conditions

(including sliding scale rates), the Federal share under title 23 of the United States Code can even be higher. Certain activities identified in section 120(c) of title 23, including traffic control signalization, commuter carpooling and vanpooling, and signalization projects to provide priority for transit vehicles may be funded at 100 percent Federal share if they meet the conditions of that section.

Those responsible for CMAQ project decisions have discretion with respect to the level of local match, if any, beyond the minimum Federal requirements. For example, decisionmakers may decide that a particular project requires a 50 percent local match contribution rather than the usual 20 percent required under Federal law.

*VI. Geographic Areas that are Eligible to Use CMAQ Funds*

Impact of the Revised NAAQS

The CMAQ eligibility provisions under TEA-21 (23 U.S.C. 149(b)) allow that any area designated as nonattainment after December 31, 1997, be eligible to spend CMAQ funding even though the area may not be classified according to the classifications identified in the Clean Air Act Amendments of 1990 (Sections 181(a), and 186(a)). Such areas, however, will not be included in the apportionment factors since they will

not be given classifications. This provision ensures that any areas designated nonattainment as a result of the revised ozone and PM air quality standards, promulgated in 1997, will be eligible to receive CMAQ funding. Areas which are designated as nonattainment after December 31, 1997, and are subsequently redesignated to maintenance areas are also eligible to receive CMAQ funds.

The EPA's policies regarding the revocation of the PM-10 standard are still under development. Issues affecting the distribution of CMAQ funds and eligibility for affected areas will be addressed after EPA determines its policies with respect to revocation of the PM-10 standard.

#### Revocation of the 1-Hour Ozone Standard

As part of the transition to the 8-hour ozone standard, EPA is revoking the 1-hour standard in areas that demonstrate the requisite 3 years of "clean" monitoring data. Among areas where the 1-hour standard is revoked, those areas that have *EPA-approved* maintenance plans on the effective date of revocation will continue to have their maintenance plans in full force. As maintenance areas, they will continue to be eligible for CMAQ funds and will be included in the annual apportionment factors. The conformity requirements will also continue to apply in these areas.

Other areas for which the 1-hour ozone standard is revoked may not have EPA-approved maintenance plans. These areas are no longer designated nonattainment or maintenance relative to the 1-hour standard. As such, these areas will not be subject to the conformity requirements, and they will no longer be able to meet the basic statutory requirement for CMAQ eligibility unless they are designated nonattainment or maintenance for CO and/or PM. In order to provide continuity in the transportation/air quality planning process, FHWA/FTA will allow these areas to use CMAQ funds for air quality improvement projects that were included in the first 3 years of the transportation improvement program (TIP). In addition, these areas will be granted a 4-month period beginning with the date of release of this guidance or the effective date of revocation, whichever is later, to make any adjustments to their TIPs.

#### Classification Criteria

An area that was designated as a nonattainment area for ozone, CO or PM-10 under the CAA prior to December 31, 1997, is eligible for

CMAQ funds provided that the area is also classified in accordance with Sections 181(a), 186(a), or 188(a) or (b) of the CAA. This means that ozone nonattainment areas must be designated and classified "marginal" through "extreme," and CO and PM-10 nonattainment areas must be designated and classified either "moderate" or "serious" to be eligible for CMAQ funding. Submarginal ozone nonattainment areas are now included in the CMAQ apportionment formula and are eligible to receive CMAQ funds. Areas that were previously designated nonattainment and classified in accordance with this section, but are subsequently redesignated to maintenance areas are also eligible to receive CMAQ funds.

Areas which were designated nonattainment prior to December 31, 1997, but were not classified in accordance with the above are *not* eligible to receive CMAQ funds. These include but are not limited to areas that were formerly considered as ozone "transitional" and "incomplete data" areas and CO "not classified" areas.

#### Maintenance Areas

Maintenance areas that were designated nonattainment, but have since met the air quality standards are now explicitly eligible to receive CMAQ funding and are included in the apportionment factors. Such areas must have met the classification requirements of the 1990 CAA if they were designated nonattainment prior to December 31, 1997, (as discussed in Section V above) in order to be eligible and included in the apportionment factors.

In States which have ozone or CO maintenance areas and no nonattainment areas, CMAQ funds must be used in the maintenance areas. Previous guidance allowed such States flexibility to use their CMAQ funding for projects eligible under the STP if a State could demonstrate that it had sufficient funding to meet its air quality commitments within its maintenance areas. Such flexibility is no longer allowed since maintenance areas are now included in the apportionment formula and the eligibility provisions require that CMAQ funding be used in nonattainment and maintenance areas.

#### PM-10 Nonattainment and Maintenance Areas

Nonattainment and maintenance areas for PM-10 are also now explicitly eligible to receive CMAQ funding. States that have PM-10 nonattainment or maintenance areas only (i.e., no ozone or CO nonattainment or maintenance areas) are granted

additional flexibility under TEA-21. Since these areas are not included in the CMAQ apportionment calculation, the State may use its minimum apportionment for projects eligible under the STP or the CMAQ program anywhere in the State. However, such States are encouraged to use their CMAQ funds in the PM-10 nonattainment and maintenance areas. Examples of eligible projects and programs in a PM-10 nonattainment or maintenance area include paving dirt roads, diesel bus replacements, and purchase of more effective street-sweeping equipment.

#### VII. Project Eligibility Provisions

##### Projects Not Eligible for CMAQ Funding

As was the case under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240, Dec. 18, 1991, 105 Stat. 1914), certain projects may not be funded under the CMAQ program under any circumstances. Activities which are legislatively prohibited, including scrappage programs and highway capacity expansion projects, may not be funded under the CMAQ program. Similarly, rehabilitation and maintenance activities, as noted below, show no potential to make further progress in achieving the air quality standards and may not be funded under the CMAQ program. Program funds may also not be used for projects which are outside of nonattainment or maintenance area boundaries except in cases where the project is located in close proximity to the nonattainment or maintenance area and the benefits will be realized primarily within the nonattainment or maintenance area boundaries. (Note: The use of CMAQ funds under the flexibility provisions discussed in Section V are an exception). Public-private partnerships involving the implementation of statutorily mandated measures (e.g., phase-in of alternatively fueled fleets) may not be funded with CMAQ funds. Finally, projects not meeting the specific eligibility requirements under titles 23 or 49 of the United States Code may also not be funded under this provision.

##### Highway and Transit Maintenance and Reconstruction Projects:

Routine maintenance projects are not eligible for CMAQ funding. Routine maintenance and rehabilitation on existing facilities maintains the existing levels of highway and transit service, and therefore maintains existing ambient air quality levels. Thus, no progress is made toward achieving the NAAQS. Rehabilitation projects only serve to bring existing facilities back to

acceptable levels of service. Other funding sources, like the STP and FTA's Section 5307 program, exist for reconstruction, rehabilitation and maintenance activities. Replacement-in-kind of track or other equipment, reconstruction of bridges, stations and other facilities, and repaving or repairing roads are also ineligible for CMAQ funding.

*Construction of SOV Capacity:*

Construction projects which will add new capacity for SOV are not eligible under this program unless the project consists of a high-occupant vehicle (HOV) facility that is available to SOV only at off-peak travel times. For purposes of this program, construction of added capacity for SOV means the addition of general purpose through lanes to an existing facility which are not HOV lanes, or construction of a highway at a new location. However, projects to plan, develop, assess, or construct new High Occupancy Toll lanes are an eligible CMAQ expense so long as they are part of the Value Pricing Program under TEA-21 (23 U.S.C. 149(a)).

**Project Eligibility-General Conditions**

All projects and programs eligible for CMAQ funds must come from a conforming transportation plan and TIP, and be consistent with the conformity provisions contained in section 176(C) of the CAA and the Transportation Conformity Rule Projects (40 CFR Parts 51 and 93, as amended) need to be included in TIPs or state-wide transportation improvement projects developed by MPOs or States respectively, under the metropolitan or statewide planning regulations (23 CFR 450, 49 CFR Part 613). Projects also need to complete the National Environmental Policy Act (NEPA) requirements and meet basic eligibility requirements for funding under titles 23 and 49 of the United States Code.

In cases where specific guidance is not provided, the following should guide CMAQ eligibility decisions.

*Capital Investment:*

CMAQ funds should be used for establishment of new or expanded transportation projects and programs to help reduce emissions. In many cases this is likely to be capital investment in transportation infrastructure or establishment of a new demand management strategy or other program.

*Operating Assistance:* There are several general conditions which must be met in order for any type of operating assistance to be eligible under the CMAQ program.

- In extending the use of CMAQ funds to operating assistance, the intent

is to help start up viable new transportation services which can demonstrate air quality benefits and eventually will be able to cover their costs to the maximum extent possible. Other established funding sources should supplement and ultimately supplant the use of CMAQ funds for operating assistance.

- Operating assistance includes all costs related to ongoing provision of new transportation services including, but not limited to, labor, administrative costs and maintenance.

- When using CMAQ funds for operating assistance, local share requirements still apply.

- Operating assistance is limited to new transit services and new or expanded transportation demand management strategies.

- Operating assistance under the CMAQ program is limited to 3 years, except as noted elsewhere in this guidance.

*Emission Reductions:* Projects funded under the CMAQ program must be expected to result in tangible reductions in CO, ozone precursor emissions, or PM-10 pollution. This can be demonstrated by the assessment of anticipated emission reductions that is required under this guidance for most projects. The FHWA and FTA strongly encourage State and local governments to use CMAQ funds for their primary purpose which is to assist nonattainment and maintenance areas to reduce transportation-related emissions.

*Public Good:* CMAQ funded projects should be for the good of the general public. Public-private partnerships may be eligible, however, so long as a public good (i.e., reduced emissions) results from the project (see discussion of public-private partnerships below).

**Eligible Activities and Projects**

Eligibility information on activities and projects and program areas is provided below, together with any restrictions. All possible requests for CMAQ funding are not covered; this section provides particular cases where guidance can be given and rules of thumb applied to assist decisions regarding CMAQ eligibility.

*1. Transportation Activities in an Approved SIP or Maintenance Plan:*

Transportation activities in approved SIPs and maintenance plans are likely to be eligible activities and, if so, must be given the highest priority for CMAQ funding. Their air quality benefits will generally have already been documented. If not, such documentation is necessary before CMAQ funding can be approved. Further, the transportation improvement must contribute to the

specific emission reductions necessary to bring the area into attainment.

*2. TCMs:*

The TCMs included in 42 U.S.C. 7408(f)(1) are the kinds of projects intended by the TEA-21 for CMAQ funding, and generally satisfy the eligibility criteria. As above, and consistent with the statute, air quality benefits for TCMs must be determined and documented before a project can be considered eligible. One CAA TCM, xvi—programs to encourage removal of pre-1980 vehicles is specifically excluded from the CMAQ program by the TEA-21 legislation. Eligible TCMs are listed below as they appear in 42 U.S.C. 7408 (f)(1).

(i) programs for improved public transit;

(ii) restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or HOV;

(iii) employer-based transportation management plans, including incentives;

(iv) trip-reduction ordinances;

(v) traffic flow improvement programs that achieve emission reductions;

(vi) fringe and transportation corridor parking facilities serving multiple-occupancy vehicle programs or transit service;

(vii) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use;

(viii) programs for the provision of all forms of high-occupancy, shared-ride services;

(ix) programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of non-motorized vehicles or pedestrian use, both as to time and place;

(x) programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

(xi) programs to control extended idling of vehicles;

(xii) reducing emissions from extreme cold-start conditions (newly eligible);

(xiii) employer-sponsored programs to permit flexible work schedules;

(xiv) programs and ordinances to facilitate non-automobile travel, provision and utilization of mass transit, and to generally reduce the need for SOV travel, as part of transportation planning and development efforts of a locality, including programs and ordinances applicable to new shopping centers, special events, and other centers of vehicle activity;

(xv) programs for new construction and major reconstructions of paths,

tracks or areas solely for the use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest. For purposes of this clause, the Administrator shall also consult with the Secretary of the Interior; and

(xvi) programs to encourage removal of pre-1980 vehicles (Excluded from Eligibility).

### 3. *Extreme Low-Temperature Cold Start Programs:*

Projects intended to reduce emissions from extreme cold-start conditions are now eligible for CMAQ funding. This TCM is listed in 42 U.S.C. 7408 (f)(1) and was heretofore excluded from eligibility for CMAQ funding. Examples of such projects include:

- Retrofitting vehicles and fleets with water and oil heaters; and
- Installing electrical outlets and equipment in publicly-owned garages or fleet storage facilities (see also section below on public-private partnerships for a possible expansion to privately-owned equipment and facilities).

### 4. *Public-Private Partnerships:*

The TEA-21 provides greater access to CMAQ funds for projects which are cooperatively implemented under agreements between the public and private sectors and/or non-profit entities. The new statutory language leads to several important changes regarding the eligibility of joint public-private initiatives. Nevertheless, it remains the responsibility of the cooperating public agency to apply for CMAQ funds through the metropolitan planning process and to oversee and protect the investment of Federal funds in a public-private partnership.

The TEA-21 requires that a legal, written agreement be in place between the public agency and private or non-profit entity before implementing a CMAQ-funded project. This provision supersedes the requirement under previous guidance that private entities have public agency sponsors before participating in CMAQ-funded projects. These agreements should clearly specify the use to which CMAQ funding will be put; the roles and responsibilities of the participating agencies; cost-sharing arrangements for capital investments and/or operating expenses; and how the disposition of land, facilities and equipment will be effected should the original terms of the agreement be changed, such as insolvency or a change in the ownership of the private entity.

While the new statute provides greater latitude in funding projects initiated by private or non-profit entities, it also raises concerns about the use of public funds to benefit a specific private entity. Since the public benefit

is air quality improvement, it is expected that future funding proposals involving private entities will demonstrate strong emission reduction benefits. Furthermore, this new flexibility requires that greater emphasis be placed on an open, participatory process leading up to the selection of projects for funding. Because of concerns about the equitable use of public funds, FHWA and FTA consider it essential that all interested parties have full and timely access to the process of selecting projects for CMAQ funding. This should involve open solicitation for project proposals; objective criteria developed for rating candidate projects; and announcement of selected projects.

The TEA-21 also contains some restrictions and special provisions on the use of CMAQ funds in public-private partnerships. Eligible costs under this section may *not* include costs to fund an obligation imposed on private sector or non-profit entities under the CAA or any other Federal law. For example, CMAQ funds may not be used to fund mandatory control measures such as Stage II Vapor Recovery requirements placed on fuel sellers. Energy Policy Act requirements which apply to private sector entities are not eligible for CMAQ funds. However, if the private or non-profit entity is clearly exceeding its obligations under Federal law, CMAQ funds may be used for that incremental portion of the project.

Decisions over which projects and programs to fund under CMAQ should continue to be made through a cooperative process involving the State departments of transportation, affected MPOs, transit agencies and State and local air quality agencies. All projects funded with CMAQ funds must be included in conforming transportation plans and TIPs in accordance with the metropolitan planning regulations (23 CFR 450.300), the transportation conformity requirements (40 CFR parts 51 and 93), and NEPA requirements.

Activities eligible to be considered as meeting the local match requirements under the public-private partnership provisions include:

- Ownership or operation of land, facilities or other physical assets;
- Carrying out construction or project management; and
- Other forms of participation approved by the U.S. DOT Secretary.

The TEA-21 also contained special provisions for alternative fuel projects that are part of a public-private partnership. For purchase of privately-owned vehicles or fleets using alternative fuels, activities eligible for

CMAQ funding are limited to the Federal share of the incremental cost of an alternative fueled vehicle compared to a conventionally fueled vehicle. Further, if other Federal funds are used for vehicle purchase in addition to CMAQ funds, such Federal funds must be applied to the incremental cost before CMAQ funds are applied.

Cost sharing of total project expenses, both capital and operating, is a critical element of a successful public-private venture. This is even more important if the private entity is expected to realize profits as part of the joint venture. State and local officials are urged to consider a full range of cost-sharing options when developing a public-private partnership, including a larger State/local match than the usual 20 percent required under Federal law.

### 5. *Alternative Fuels:*

The purchase of publicly-owned, alternative fuel vehicles is eligible for CMAQ funding (for information on eligible public-private sector alternative fuel projects see the discussion on public-private partnerships above).

Since all alternative fueled vehicles are not necessarily good for air quality, proposals for alternative fuel conversion should be coordinated with the State air agency and be aimed primarily at air quality improvement. As with all CMAQ proposals, it must be demonstrated that the proposed switch to alternative fuels is effective in reducing the specific pollutant(s) causing the air quality violation.

Fleet conversions no longer need to be specifically identified or included in the SIP or maintenance plan in order to be eligible for CMAQ funding. Consideration of such projects should be coordinated with air quality agencies prior to selection for funding under the CMAQ program. This coordination will ensure that such projects are consistent with SIP strategies to attain the NAAQS or in maintenance plans to ensure continued maintenance of the NAAQS.

The establishment of publicly-owned, on-site fueling facilities and other infrastructure needed to fuel alternative-fuel vehicles are also eligible expenses. If privately-owned fueling stations are in place and are reasonably accessible and convenient, then CMAQ funds may not be used to construct or operate publicly-owned fueling stations except under a public-private partnership. Such an activity would interfere with private enterprise, and needlessly use transportation/air quality funds for services duplicated in the area.

### 6. *Traffic Flow Improvements:*

The metropolitan planning provisions of TEA-21 (23 U.S.C. 134(i)(3) and 49 U.S.C. 5305) require that the

metropolitan planning process in all Transportation Management Areas (metropolitan areas of 200,000 or more in population) include a congestion management system.

Projects to develop, establish, and implement the congestion management system for both highway and transit facilities, whether under the provisions of 23 U.S.C. §§ 134 or under a State's own procedures, remain eligible for CMAQ funds where it can be demonstrated that such use is likely to reduce transportation-related emissions.

In addition to traffic signal modernization, coordination, or synchronization projects designed to improve traffic flow within a corridor or throughout an area like a central business district, Intelligent Transportation Systems (ITS), traffic management and traveler information systems can be effective in reducing traffic congestion, enhancing transit bus performance and improving air quality. The following have the greatest potential for improving air quality:

- regional multi-modal traveler information systems;
  - traffic signal control systems;
  - freeway management systems;
  - transit management systems;
  - incident management programs;
  - electronic fare payment systems;
- and
- electronic toll collection systems.

While interconnected traffic signal control systems and freeway management systems have been recognized for their air quality improvement benefits, other user services like electronic fare and toll collection systems can be useful in reducing or eliminating air quality "hot spots". Individually, these core infrastructure elements can reduce emissions and therefore qualify for CMAQ funding. However, when linked together in a system, their benefits are likely to be greater.

Agencies seeking to implement ITS projects must demonstrate consistency with the National ITS Architecture. This is addressed in separate guidance.

Operating expenses for traffic flow improvements are eligible for CMAQ funding where they can be shown to: (1) have air quality benefits, (2) the expenses are incurred from new or additional services, and (3) previous funding mechanisms, such as fares or fees for services, are not displaced.

Since CMAQ-funded projects should contribute to the attainment or maintenance of a NAAQS, it must be found that these operating costs are necessary for the overall system to contribute to attainment or maintenance of an ambient air quality standard. It is

reasonable to assume that, after several years, a transportation service may no longer be considered to be an air quality improvement project, but that it has become a part of the existing transportation network. Hence, FHWA and FTA field offices are advised to use the consultation process with EPA to make a determination that operating assistance for traffic management systems, traveler information systems and other ITS projects or programs, beyond the initial 3-year period of eligibility, will assist in the attainment or maintenance of an air quality standard. (Also see operating assistance eligibility discussion earlier in this guidance.)

#### 7. Transit Projects:

Improved public transit is one of the TCMs identified in section 108(f)(1)(A) of the CAA. However, not all transit improvements are eligible under the CMAQ program. The general guideline for determining eligibility is whether an increase in transit ridership can reasonably be expected to result from the project. As with all CMAQ-funded projects, this must be supported by a quantified estimate of the emissions effects due to the project.

Facilities: New transit facilities are eligible if they are associated with new or enhanced mass transit service. If the project is rehabilitation, reconstruction, or maintenance of an existing facility, it is not eligible since there would be no change in emissions caused by the project. Other FTA grant programs can be used for upgrading existing facilities.

Vehicles: Acquisition of new transit vehicles (bus, rail, van) to expand the fleet are eligible. New vehicles acquired as replacements for existing fleet vehicles are also eligible; however, diesel-powered replacement vehicles will have minimal impact on attaining the ozone, PM, and CO standards. For these projects in particular, emissions effects must be documented so that they can be arrayed with other CMAQ proposals and allow informed decisions on the best use of available funds.

Operating Assistance: CMAQ funding can be used to support the start-up of new transit services. In order to be eligible, the service must be a discrete new addition to the system so that operating costs can be easily identified. Operating assistance is for a maximum of 3 years, after which other sources of funding must be used if the service is to be continued.

Fare subsidies: CMAQ funds may be used to subsidize regular transit fares, but only if the reduced or free fare is part of an overall program for preventing exceedances of a national air quality standard during periods of high

pollutant levels. Examples include metropolitan areas that have implemented voluntary mobile source emission reduction programs which promote a range of measures individuals can take to reduce ozone-forming emissions. "Ozone-action" programs, designed to avoid exceedances when ozone concentrations are high, are bolstered by more permanent measures aimed at discouraging SOV driving. Refer to section VII.12 for additional discussion of fare/fee subsidies.

#### 8. Bicycle and Pedestrian Facilities and Programs:

Bicycle and pedestrian facilities and programs are included as a TCM in section 108(f)(1)(A) of the CAA. Included as eligible projects are:

- construction of bicycle and pedestrian facilities;
- non-construction projects related to safe bicycle use; and
- establishment and funding of State bicycle/pedestrian coordinator positions, as established in the ISTEA, for promoting and facilitating the increased use of non-motorized modes of transportation. This includes public education, promotional, and safety programs for using such facilities.

#### 9. Travel Demand Management:

Travel demand management encompasses a diverse set of activities ranging from traditional carpool and vanpool programs to more innovative parking management and road pricing measures. Many of these measures are specifically referenced in the legislation creating the CMAQ program. Travel demand management projects meeting the basic eligibility requirements of the FHWA and FTA funding programs are eligible for CMAQ funding. Eligible activities include: market research and planning in support of travel demand management (TDM) implementation; traffic calming measures; capital expenses required to implement TDM measures; operating assistance to administer and manage TDM programs for up to 3 years; as well as marketing and public education efforts to support and bolster TDM measures.

Experience to date suggests that new transportation service has the greatest chance of success if offered along with complementary measures which discourage SOV use, such as parking restrictions or differential parking fees. Several provisions in TEA-21 require metropolitan areas to consider TDM measures in the planning process and this guidance seeks to encourage their development and implementation.

With respect to traffic calming measures, such projects should be examined on a case-by-case basis to assess eligibility. Not all traffic calming

measures will lead to reduced emissions and States and MPOs should analyze these projects in the local context in which they would be implemented.

#### 10. *Outreach and Rideshare Activities:*

Outreach activities, such as public education on transportation and air quality, advertising of transportation alternatives to SOV travel, and technical assistance to employers or other outreach activities relating to promoting non-SOV travel options have been, and continue to be, eligible for CMAQ funds. Such outreach activities may be funded under the CMAQ program for an indefinite period.

Outreach activities differ fundamentally from the establishment of transportation services. They are communication services that are critical to successful implementation of transportation measures and may equally affect new and existing transit, shared ride, I/M, traffic management and control, bicycle and pedestrian, and other transportation services. As such, they are intended to continue reaching new audiences each time they are implemented, and restrictions on the length of time they may be funded seems contrary to one of the program's goals of effecting behavioral changes to reduce transportation emissions.

*Marketing Programs:* Marketing programs to increase use of transportation alternatives to SOV travel and public education campaigns involving the linkage between transportation and air quality are eligible operating expenses. Transit "stores" selling fare media and dispensing route and schedule information which occupy leased space are also eligible. In addition, programs to promote the recently enacted Tax Code change related to commute benefits are eligible for CMAQ funding. [Note: The Internal Revenue Code 26 U.S.C. § 132(f) allows employers to exclude up to \$65 per month for transit and vanpool expenses and up to \$175 per month for qualified parking expenses from an employee's gross income. (For taxable years after December 31, 2001, the amount for transit and vanpooling increases to \$100 per month and is indexed for inflation (as is already the case for qualified parking expenses) beginning for taxable years after December 31, 2002.) As a result of TEA-21 amendments to the Code, employers may either provide these benefits free to employees as a tax-free benefit, in addition to existing compensation and benefits, or allow employees to use their own gross income before taxes to purchase these

benefits through their employers, thus saving on taxes.]

*Carpooling and Vanpooling:* Carpool and vanpool programs include computer matching of individuals seeking to carpool and employer outreach to establish rideshare programs and meet CAA requirements. These activities, even if they are part of an existing rideshare program, are eligible for CMAQ funding. New or expanded rideshare programs, such as new locations for matching services, upgrades for computer matching software, etc. are also eligible and may be funded for an indefinite period of time for both carpool and vanpool services.

The implementation of a vanpool operation entails purchasing or leasing vehicles and providing a transportation service. Therefore, proposals for vanpool activities such as these must be for new or expanded service to be eligible and are subject to the 3-year limitation on operating costs.

Under the CMAQ program, the purchase price of a publicly-owned vehicle for a vanpool service does not have to be paid back to the Federal Government. Requiring payback would place an additional constraint to wider implementation and usage of vanpool programs. Nonetheless, CMAQ funds should not be used to buy or lease vans that would be in direct competition with and impede private sector initiatives. Consistent with the statewide and metropolitan planning regulation (23 CFR 450.300), States and MPOs should consult with the private sector prior to using CMAQ funds to purchase vans, and if local private firms have definite plans to provide adequate vanpool service, CMAQ funds should not be used to supplant that service.

*Transportation Management Associations:* Transportation Management Associations (TMAs) are comprised of groups of individuals, firms or employers who organize to address the transportation issues in their immediate locale. The CMAQ funds may be used for the establishment of TMAs provided that the TMA performs a specified purpose in the project agreement that will be part of any air quality improvement strategy. The TMAs can play a useful role in brokering transportation services to private employers, and CMAQ funds may be used to contract with TMAs for this purpose. Eligible costs include coordinating and marketing rideshare programs, providing shuttle services, developing parking management programs, etc. Eligible expenses for reimbursement of associated TMA start-up costs are limited to 3 years.

#### 11. *Telecommuting:*

The DOT supports the establishment of telecommuting programs. Planning, technical and feasibility studies, training, coordination, marketing and promotion are eligible activities under CMAQ. Physical establishment or construction of telecommuting centers, computer and office equipment purchases and related activities are not eligible.

#### 12. *Fare/Fee Subsidy Programs:*

The CMAQ program allows funding for user fare or fee subsidies in order to encourage greater use of alternative travel modes (e.g., carpool, vanpool, transit, bicycling and walking). This policy has been established to encourage areas to take a more comprehensive approach—including both supply and demand measures—in reducing transportation emissions.

*Transit Services:* CMAQ funds can be used to subsidize transit fares only if the reduced fare is offered as a component of a comprehensive, targeted program to reduce SOV use during episodes of high pollutant concentrations. (Also see Transit Project eligibility section.)

#### *Other Demand Management*

*Strategies:* CMAQ funds can be used to subsidize fares or fees for vanpools, shuttle services, flat-fare taxi programs and other demand management strategies. Examples of how the fare/fee subsidy might be used include: a program subsidizing empty seats during the formation of a new vanpool; reduced fares for shuttle services within a defined area, such as a flat-fare taxi program; or providing financial incentives for carpooling, bicycling, and walking in conjunction with a commuter choice or other program such as those described under Outreach and Rideshare Activities above.

Other components of fare/fee subsidy programs include public information and marketing of non-SOV alternatives, parking management measures, employer-based commuter choice programs, and better coordination of existing transportation services. Fare/fee subsidies under the CMAQ program are intended as short-term incentives. As with operating assistance, there is a maximum 3-year time limit.

#### 13. *Intermodal Freight:*

The CMAQ funds have been, and continue to be, used for improved intermodal freight facilities where air quality benefits can be shown. Capital improvements as well as operating assistance meeting the conditions of this guidance are eligible.

#### 14. *Planning and Project Development Activities:*

Project development activities that lead to construction of facilities or new

services and programs with air quality benefits, such as preliminary engineering or project planning studies are eligible. This includes studies for the preparation of environmental or NEPA documents and related transportation/air quality project development activities. Project development studies directly related to a TCM are also eligible. In the event that air quality monitoring is necessary to determine the air quality impacts of a proposed project which is eligible for CMAQ funding, the costs of that monitoring are also eligible. As is the case with all CMAQ funded activities, all projects proposed for funding must be included in the MPO Plan and TIP and must meet the metropolitan planning requirements.

General planning activities, such as economic or demographic studies, that do not directly propose or support a transportation/air quality project or are too far removed from project development to ensure any emission reductions are not eligible for funding. Funding for preparation of NEPA or other environmental documents that are not related to a transportation project to improve air quality is also ineligible. Such activities should be funded with other appropriate title 23 or title 49 FTA funds.

Region- or area-wide air quality monitoring is not eligible because such projects do not themselves yield air quality improvements nor do they lead directly to projects that would yield air quality benefits. Air quality monitoring is normally a State air quality agency responsibility which is funded under section 105 of the CAA. If the MPO or State chooses, air quality monitoring could also be funded as a transportation planning activity and appropriate title 23 funds used.

#### 15. I/M Eligibility:

Emission I/M programs and related activities show strong potential for improving air quality and are cost-effective uses of CMAQ funds. Recognizing this, construction of facilities and purchase of equipment for I/M stations are eligible for CMAQ funds. Projects necessary for the development of these I/M programs and one-time start-up activities, such as updating quality assurance software or developing a mechanic training curriculum, are also eligible activities. Operating expenses are eligible for CMAQ funding subject to the general conditions applying to all new transportation services. Specifically, the I/M program must constitute new or additional efforts; existing funding (including inspection fees) should not

be displaced, and operating expenses are only eligible for 3 years.

Funds under the CMAQ program may be used for the establishment of I/M programs at publicly-owned I/M facilities. Publicly-owned I/M facilities may be constructed, equipment may be purchased, and the facility operated for up to 3 years with CMAQ funds, provided that the conditions covering operations described above are met.

The establishment of I/M programs at privately-owned stations, such as service stations that own the equipment and conduct emission test-and-repair services, can only be funded under the CMAQ program under the provisions covering "public-private partnerships" contained in this guidance. However, if the State relies on private stations, State or local administrative costs for the planning and promotion of the State's I/M program may be funded under the CMAQ program.

The establishment of "portable" I/M programs is also eligible under the CMAQ program, provided that they are public services, contribute to emission reductions and do not conflict with statutory I/M requirements or EPA implementing regulations. Like all CMAQ-funded projects, these programs must meet any relevant NEPA requirements and must be included in the area's plan and TIP before they can be funded.

#### 16. *Magnetic Levitation Transportation Technology Deployment Programs:*

CMAQ funds may be used to fund a portion of the full project costs (including planning, engineering, and construction) pursuant to section 1218—Magnetic Levitation Transportation Technology Deployment Program of TEA-21 (23 U.S.C. 322) and in accordance with the provisions of section 1218.

#### 17. *Experimental Pilot Projects:*

States and local areas have long experimented with various types of transportation services—and different means of employing them—in an effort to better meet the travel needs of their constituents. These "experimental" projects may not meet the precise eligibility criteria for Federal and State funding programs, but they may show promise in meeting the intended public purpose of those programs in an innovative way. The FHWA and FTA have supported this approach in the past and funded some of these projects as demonstrations to determine their benefits and costs.

The CMAQ provisions of TEA-21 allow experimentation provided that the project or program can reasonably be defined as a "transportation" project

and that emission reductions can reasonably be expected "through reductions in vehicle miles traveled (VMT), fuel consumption or through other factors." This guidance encourages States and MPOs to creatively address their transportation/air quality problems and to experiment with new services, innovative financing arrangements, public-private partnerships and complementary approaches that constitute comprehensive strategies to reduce emissions through transportation programs. The CMAQ program can be used to support a well conceived project even if the proposal may not otherwise meet the eligibility criteria of this guidance. Proposals submitted for funding under this provision should show promise in reducing transportation emissions in nonattainment or maintenance areas and should have the concurrence of the MPO, State transportation agency and the FHWA/FTA. Such proposals must also be coordinated with EPA and State/local air quality agencies.

While the CMAQ provisions of TEA-21 were written broadly to encourage an innovative approach, the principles of sound program management must still be followed. Under this approach, there will likely be proposals for funding with which transportation agencies have little experience. As such, before-and-after studies are required to determine the actual project impacts on the transportation network (measured in VMT or trips reduced, or other appropriate measure) and on air quality (emissions reduced). An assessment of the project's benefits should be forwarded to FHWA or FTA documenting the immediate impacts as well as a projection of the project's long-term benefits.

All projects funded under this section should be explicitly identified in the annual report of CMAQ activities as required under section IX of this guidance. In future years, when before-and-after studies are complete, a summary of the actual project benefits should also be included in the annual report. The amount obligated for proposals made pursuant to this section should not exceed 25 percent of a State's yearly CMAQ apportionment.

#### VIII. *Project Selection Process—General Conditions*

Proposals for CMAQ funding should include a precise description of the project, providing information on the project's size, scope and timetable. Also, an assessment of the proposal's expected emission reductions in accordance with the provisions

described below is required. States, MPOs, and transit agencies are encouraged to develop procedures for assessing the emission reduction benefits of CMAQ projects. States are also required to submit annual reports detailing the obligations made under the CMAQ program during the previous fiscal year.

#### Air Quality Analysis

##### 1. *Quantitative Analyses:*

Quantitative assessment of how the proposal is expected to reduce emissions is extremely important to assist areas in developing and funding the most effective projects in nonattainment and maintenance areas. They also provide an objective basis for comparing the costs and benefits of competing proposals for CMAQ funding. Since States are required to submit annual reports (see discussion below), analysis of air quality benefits for individual project proposals will assist in their preparation. It is particularly important to assess and quantify the benefits of projects that increase or improve basic transportation services. This includes assessing emission reductions of transit, traffic flow improvements, ITS projects and programs, ridesharing, bicycle and pedestrian improvements. In addition, analyses are expected for conversions to alternative fuels and for I/M programs.

Decisions regarding the level and type of air quality analysis needed, as well as the credibility of its results, are left to FTA and FHWA field staff, in consultation with EPA. Across the country, State and local transportation/air quality agencies have different approaches, analytical capabilities and technical expertise with respect to such analysis. At the national level, it is not feasible to specify a single method of analysis applicable in all cases.

While no single method is specified, every effort must be taken to ensure that determinations of air quality benefits are credible and based on a reproducible and logical analytical procedure that will yield quantitative results of emission reductions. Of course, if an air quality analysis has been done for other reasons, it may also be used for this purpose.

##### 2. *Qualitative Assessment:*

Although quantitative analysis of air quality impacts is required whenever possible, some improvements may not lend themselves to rigorous quantitative analysis because of the project's characteristics or because practical experience is lacking to adequately analyze the project. In these cases, a qualitative assessment based on a reasoned and logical examination of

how the project or program will decrease emissions and contribute to attainment or maintenance of a NAAQS is appropriate and acceptable.

Public education, marketing and other outreach efforts fall into this category. The primary benefit of these activities is enhanced communication and outreach that is expected to influence travel behavior, and thus, air quality. Yet tracing the benefits to air quality through the intervening steps requires a multi-disciplinary approach that incorporates market research analysis, base case documentation, surveying, and other analytical techniques which may not be readily available to many transportation agencies. As such, these projects which can include advertising alternatives to SOV travel, employer outreach, public education campaigns, and communications or outreach to the public during "ozone alerts," or similar programs do not require a quantitative analysis of air quality benefits.

##### 3. *Analyzing Groups of Projects:*

In many situations, it may be more appropriate to examine the impacts of more comprehensive strategies to improve air quality by grouping TCMs. A strategy to reduce reliance on single-occupant vehicles in a travel corridor, for example, could include transit improvements coupled with demand management. The benefits of such a strategy should be evaluated together rather than as separate projects. Transit improvements, ridesharing programs or other TCMs affecting an entire region may be best analyzed in this fashion.

#### IX. *Program Oversight Responsibility* Annual Reports

To assist in meeting statutory obligations, States are required to prepare annual reports for FHWA, FTA, and the general public that specify how CMAQ funds have been spent and the expected air quality benefits. Annual reporting enhances accountability and the annual report enables FHWA and FTA to be responsive to the Congress on the utilization of CMAQ funds and their impact.

This report should be provided by the first day of February following the end of the previous Federal fiscal year (September 30) and cover all CMAQ obligations for that fiscal year. The report should include:

1. A list of projects funded under CMAQ, best categorized by one of the following eight project types:
  - public-private partnerships;
  - experimental pilot projects;
  - transit: facilities, vehicles and equipment, operating assistance for new transit service, etc;

- shared-ride: vanpool and carpool programs and parking for shared-ride services, etc;

- traffic flow improvements: traffic management and control services, signalization projects, ITS projects, intersection improvements, and construction or dedication of HOV lanes, etc;

- demand management: trip reduction programs, transportation management plans, flexible work schedule programs, vehicle restriction programs, etc.;

- pedestrian/bicycle: bikeways, storage facilities, promotional activities, etc; and

- I/M and other TCMs (not covered by the above categories).

For reporting purposes, project developmental activities, as well as public education, marketing and other outreach efforts that are eligible under the CMAQ program should be reported in the same category as the project or program they support.

2. The amount of CMAQ funds obligated for each project (or project category where groups of projects are analyzed together) for the year, disaggregated by the categories of projects listed above; and

3. A tabulation of the estimated emissions benefits for each project (or group of projects) for the year summed from project-level analyses and expressed as reductions of ozone precursors (volatile organic compounds and nitrogen oxides), CO, or PM-10. These reductions should be expressed as kilograms per day removed from the atmosphere.

Note that the annual report should now specifically include and identify any projects funded under the Experimental Pilot Projects provision of this guidance as well as the newly eligible public-private partnerships (see section VII). Summaries of before-and-after studies should be included as they become available.

#### Federal Agency Responsibilities and Coordination

The FTA and FHWA field offices should establish a consultation and coordination process with their respective EPA regional offices for early review of CMAQ funding proposals. Review by EPA is critical to assist the determination of whether the CMAQ-proposed projects will have air quality benefits and to help assure that effective projects and programs are approved for CMAQ funding. Proposals for funding should be forwarded to EPA as soon as possible to ensure timely review. Where Memorandum of Understanding (MOU) are in place to facilitate Federal agency

review, such MOUs should be updated as needed.

Either the local FTA or FHWA office will be responsible for project administration. In cases where the project is clearly related to transit, FTA will determine the project's eligibility and administer the project. Similarly, traffic flow improvements that improve air quality through operational improvements of the road system are administered by FHWA. For projects that include both traffic flow and transit elements, such as park-and-ride lots and intermodal projects, the administering agency will be decided on a case-by-case basis. Following initial review by the administering agency and consultation with EPA, the administering agency makes the final determination on whether the project or program is likely to contribute to attainment of a NAAQS and is eligible for CMAQ funding. The consultation process should provide for timely review and handling of CMAQ funding proposals.

#### State and MPO Responsibilities

Decisions over which projects and programs to fund under CMAQ should be made through the appropriate metropolitan and/or statewide planning process which would include the involvement of State and local air quality agencies. This process serves to develop a pool of potential CMAQ projects to be considered for funding in a State's nonattainment and maintenance areas. States, MPOs and transit agencies, in consultation with air quality agencies, are encouraged to cooperatively develop criteria for selection of CMAQ projects. The programming of CMAQ projects should be consistent with the appropriate metropolitan plan.

Projects to be funded with CMAQ funds must be included in the plans and TIPs that are developed by the MPOs in cooperation with the State and transit operators. Under the metropolitan planning regulations (23 CFR 450.300), TIPs must contain a priority list of projects to be carried out in the 3-year period following adoption. As a minimum, projects must be identified by year and proposed funding source. For projects targeting CMAQ funds, priority in the TIP should be based on the projects' estimated air quality benefits.

Since the TIPs must be consistent with available funding, it is important that the State advise the MPOs of the estimated amount of CMAQ funds in a timely manner. Once CMAQ projects are included in a TIP (approved by the MPO and the Governor), and included in a

FHWA/FTA-approved statewide TIP, those projects in the first year may be implemented. Projects in the second or third year of the TIP could be advanced for implementation using the specified project selection procedures in the planning regulation.

It is the State's responsibility to manage its obligation authority made pursuant to title 23 to ensure that CMAQ (and other Federal-aid) funds are obligated in a timely fashion and do not lapse. Other provisions affecting the overall Federal-aid program, such as advance construction authority, apply to the CMAQ program as well.

Close coordination is needed between the State and MPO to assure that CMAQ funds are used appropriately and to maximize their effectiveness in meeting the CAA requirements. States and MPOs must fulfill this responsibility so that nonattainment and maintenance areas are able to make good-faith efforts to attain and maintain the NAAQS by the prescribed deadlines. State DOTs and MPOs should consult with State and local air quality agencies to develop an appropriate project list of CMAQ programming priorities which will have the greatest impact on air quality.

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA-1999-6252]

#### CSX Transportation, Inc.; Cancellation of Public Hearing

On January 21, 2000, the Federal Railroad Administration (FRA) published a notice in the **Federal Register** (65 FR 3529) announcing that a public hearing will be held on February 23, 2000, based upon CSX Transportation, Inc.'s (CSXT) request to obtain a temporary waiver of compliance from certain provisions of the Railroad Locomotive Safety Standards, title 49, Code of Federal Regulations (CFR), part 229, CSXT has requested that the public hearing be postponed for a period of at least 30 days in order to provide time for all interested parties to resolve differences regarding the petition. FRA is therefore canceling the February 23 hearing.

All parties expressing an interest in this proceeding have been notified of this request and have concurred in this action. Depending on the results of discussions among the interested parties, a hearing may or may not be scheduled in the future. If a hearing is

rescheduled, a notice will be published in the **Federal Register**.

Issued in Washington, DC on February 18, 2000.

**Michael T. Haley,**

*Deputy Chief Counsel, Federal Railroad Administration.*

[FR Doc. 00-4348 Filed 2-22-00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 33849]

#### Colorado Central Railroad Company, Operation Exemption, Yreka Western Railroad Company

Colorado Central Railroad Company (Colorado), a noncarrier, newly created to become a Class III railroad, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 8.9 miles of rail line currently owned by Yreka Western Railroad Company (Yreka), between milepost 0.0 in Montague and milepost 8.9 near Yreka, in Siskiyou County, CA.<sup>1</sup>

Colorado indicates that it has executed an agreement with Yreka to provide common carrier freight service as well as excursion passenger service.<sup>2</sup>

The transaction was scheduled to be consummated on or after January 31, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33849, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-

<sup>1</sup> Colorado states that the Surface Transportation Board (Board) had previously authorized abandonment by Yreka of its entire 8.9 miles of rail line. See *Yreka Western Railroad Company—Abandonment Exemption—in Siskiyou County, CA*, STB Finance Docket No. AB-246 (Sub-No. 2X) (STB served May 4, 1999). Colorado further states that, as of the January 24, 2000 filing of the verified notice of exemption, the abandonment had not been consummated.

Colorado certifies that its annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its revenues are not projected to exceed \$5 million.

<sup>2</sup> Colorado asserts that intrastate excursion rail passenger service is not subject to the Board's regulatory jurisdiction, citing *Napa Valley Wine Train, Inc.—Pet. for Declaratory Order*, 7 I.C.C.2d 954, 960-65 (1991) and cases discussed therein and *Magner-O'Hara Scenic Ry. v. I.C.C.*, 692 F.2d 441 (6th Cir. 1982).